



Shelf Mark Theses Section 2

SCHAEFER Ph.D. 2002



UNIVERSAL RIGHTS FROM EXTERNAL REASONS

Brian Schaefer

Submitted for the degree of PhD
The University of Edinburgh
2001

I hereby confirm that I am the author of this thesis. The work is entirely my own. It has not been submitted for any other degree or professional qualification.

Sean P. Swafford

For Margaret, who practices what I only preach

Acknowledgements

I would like to thank my parents for their support of my project. I'm not sure they really wanted me to do a PhD in philosophy, but they provided their full support, financial and otherwise, throughout a process that took longer than any of us thought it would. I hope that some day I can show them how much it has paid off by becoming something other than a taxi driver who makes highbrow conversation.

Many people helped me in my philosophical development in the last several years, too many people to mention. Some of the most influential among them in the philosophy department of the University of Edinburgh have been Vinit Haksar, Michael Menlowe, Richard Holton, Vincent Hope, Timothy Sprigge, and Dory Scaltsas. I extend my sincere and heartfelt thanks to each one of them. My other philosophical influences should be obvious from the content of the thesis, but especially worthy of note are T.M. Scanlon, Ronald Dworkin, Joel Feinberg, Thomas Nagel, and John Rawls. Thanks also to Rob Fisher for allowing me to be involved in an exciting and productive conference series, and also for many interesting discussions.

I of course thank all the people who have befriended me in my time in Edinburgh. I hesitate to make a list at the risk of excluding someone, but a partial list must include Dilsun Kirli, Laura Hourston, Bobby Smyth, Martin Sharp, Hsiao-Wei Lin, Helen Carmichael, Emanuele Costa, Richard Gray, Laurie Arnal, and Danny Ryan. PhD students are in a strange position in Edinburgh, with many friends doing shorter degrees, always coming and going. But I am fortunate enough to have made many friends who will remain friends even with added geographical distance. I feel especially fortunate that the cosmopolitan nature of this

university has contributed to the fact that I now have friends from many of the far reaches of the globe. Sharing my life with them has been almost as educational as doing the PhD itself.

I'd like to thank the following people for adding magic to the world: Van Morrison, Robert Pirsig, William Blake, Thelonius Monk, Bob Dylan, Papa Wemba, William Butler Yeats, John Lee Hooker, Gabriel Garcia Marquez, Beck, Radiohead and David Murray. Life is never lonely when you have your talent to keep you company.

Thanks also to everyone I have met in my travels through Scotland and through Europe. Scotland will remain in my heart forever. I will miss its mountains, its islands, its lochs, its sheep, its empty spaces, and its midnight sunsets in June. Edinburgh is an almost ideal city in which to live and I will miss it very much. Thanks to everyone who has come to visit me from elsewhere, especially Rob Schlesinger, who visited twice. I've enjoyed sharing my experiences with all of you. This goes especially, of course, for Margaret Muthoka, my friend, lover, and companion from a far-off land. Through her courage, wisdom and persistence Margaret has expanded my sense of the possibilities that life contains. There's no way I can adequately thank her for this, but I have tried to begin by dedicating the thesis to her.

BPS
12/01

Contents

Abstract 1

Introduction 2

1: The Importance of Rights 8

- 1.1 Feinberg's argument: promise 9
- 1.2 Feinberg's argument: limitations 14
- 1.3 Helping Feinberg 27
- 1.4 Universal rights 39

2: The Need for a New Natural Law Theory of Universal Rights 43

- 2.1 Universal rights and objective values 44
- 2.2 Natural rights theories 58

3: Moral Objectivism 75

- 3.1 The priority of cognitivism 78
- 3.2 On the burden of proof 80
- 3.3 The subjectivist challenge 83
- 3.4 McNaughton and moral phenomenology 88
- 3.5 The analogy with secondary qualities 91
- 3.6 Naturalistic realism 96
- 3.7 Irrealist cognitivism 103

4: A Scanlonian View of Moral Reasons 112

- 4.1 Moral reasons 113
- 4.2 Contractualism 137
- 4.3 Shared reasons 147
- 4.4 Conclusion 170

5: The Derivation of Rights 174

- 5.1 The conceptual story of rights 176
- 5.2 The importance of rights revisited 192
- 5.3 Deriving universal rights 200
- 5.4 Objections 205

Conclusion 210

Appendix A: 'Evil and the Need For Universal Moral Rights' 218

Appendix B: 'The Disvalue of Pain and Pain-Infliction' 242

Bibliography 262

Abstract

The thesis is an attempt to find a satisfactory grounding for universal moral rights. It attempts to ground universal moral rights in a revised version of the framework of moral reasons offered by T.M. Scanlon in *What We Owe to Each Other*. In doing so it takes on several related projects. It makes a case for why rights generally, and universal rights in particular, are an essential part of a proper moral theory. It then attempts an extended argument in support of why the method of grounding universal rights at which I eventually arrive is superior to competitors. The argument encompasses both why I believe that universal rights need to be grounded in an objective meta-ethics, and why I take the sort of irrealist cognitivism advanced by Scanlon to be the most promising form of moral objectivism. The argument is admittedly defeasible: it is not so ambitious as to try to eliminate every competing rights theory, but it purports to be strong enough to show that my theory enjoys significant advantages over many others. In the course of making this argument I align myself with the natural law tradition, and claim that my position is best understood as a new natural law theory. The thesis goes on to defend many elements of the Scanlonian picture of moral reasons, but also to revise that picture in important ways, particularly by arguing that Scanlon's contractualism is best understood to be underpinned by an account of the sacred offered by Ronald Dworkin, and that some moral reasons are reasons we all share. The final chapter of the thesis shows how rights are derived from Scanlonian reasons, and particularly how universal rights are derived from shared reasons.

Introduction

It is the aim of this thesis to provide a justification of universal moral rights. In the process of attempting to do this it will also examine both the nature and content of those rights, and of non-universal rights as well. Clearly this is a daunting project, but I think it is equally clear that there is an urgent need for such a project today, both within the realm of academic philosophy and outside of it. There is little agreement among moral philosophers about how rights are best justified, or indeed whether we need to speak of rights at all. Even among those who speak of moral rights, some do not believe there are any universal moral rights. To say the least, the thesis addresses an issue which is very much alive in contemporary moral philosophy. The need for an examination of the justification of universal moral rights may be even more urgent outside of academic philosophy. In the past several decades rights-talk has become nearly ubiquitous in geopolitics, and much of this talk has focused on the alleged importance of universal rights of the kind delineated in the UN Declaration of Human Rights. Yet comparatively little effort has been devoted to explaining how it is that these alleged rights are justified. Politicians and others who advocate universal rights seem often to think that the intuitive plausibility of rights is a sufficient condition for their validity, but this is plainly inadequate. Universal rights are not intuitively plausible to everyone, and especially not to those eager to perform the kind of acts that would be considered rights violations! In addition, there are legitimate concerns among some groups that the global establishment of 'human rights' is really just a form of cultural imperialism, with one cultural tradition trying to establish a domination over others. These concerns will not be addressed successfully by rights defenders through appeals to the intuitive plausibility

of universal rights. The concept of universal moral rights must be defended by philosophical argument.

Briefly and generally, my view is that in order for universal moral rights to have a sufficiently firm basis they must be grounded in an objective meta-ethical foundation. Moral rights must be derived from moral values, and universal moral rights must correspondingly be derived from moral values that are universally valid, i.e. objective. I suggest that this is best done by expressing values in terms of reasons, and universal values in terms of shared reasons. For example, if it is true that everyone has a reason to respect the freedom of others, then perhaps there could be a universal right to have one's freedom protected that is derived from the reason. The right does not follow analytically from the reason, as we shall see. But I hope to make the case that, if we accept the existence of shared reasons, there is a preponderance of arguments in favour of the acceptance of universal rights that follow from those reasons.

I will take the opportunity to clarify at the outset some of the rights terminology featured in the thesis. When we speak of rights in general we mean advantageous positions that are conferred on some possessor by law, morals, rules, or other norms. The way in which these positions are advantageous could sometimes be understood in terms of mere permissions, though I will usually speak of them in a stronger sense as claims we have on others. As I have already indicated, my thesis mostly concerns moral rights, and when I speak of 'rights' I will mean moral rights, unless I indicate otherwise. Moral rights, a subset of rights, are those advantageous positions that are conferred on a possessor by a given moral framework. Universal moral rights are those moral rights that are shared by everyone. In the thesis I take note of the fact that 'everyone' here might refer to all persons, all human beings, all sentient creatures, or some other group. I suggest a preference for the view that at least some of our universal rights extend to at least some animals.

We must not forget about the existence or importance of legal rights, though I will say little about them in the thesis. Legal rights are advantageous positions conferred on some possessor by the law. Like moral rights, they can be advantageous both in the sense of being

permissions, and in the stronger sense of being claims on others. It is of the utmost importance that universal moral rights become universally recognised legal rights, because it is through the law that rights become enforceable by the state (or perhaps by an international body such as the UN), and such enforcement will often be necessary. The reason I say little about legal rights is not because they are unimportant, but because a consideration of them and their relation to moral rights is conceptually posterior to the discussion that comprises my thesis.

Another clarification about terminology. Some may wonder why I choose to speak of universal moral rights and not 'human rights.' The latter term is after all in greater vogue on the geopolitical scene. The reason I avoid the term 'human rights' is because it carries some implications that seem at odds with my treatment of universal rights. First, human rights are usually understood to be possessed by all and only human beings (and not by animals, for example). But I suspect that some universal moral rights do extend to (some) animals, while I leave open the possibility that other moral rights that I call universal are not shared even by all human beings. To speak of 'human rights' in these instances might be misleading. Also, human rights are often understood to be possessed by humans *because they are human*, and for no other reason. I think that universal moral rights are possessed by creatures ultimately because others have reasons to treat them in certain ways, reasons that do not stem wholly from the fact that the creatures in question are members of a given species such as *homo sapiens*. So again the label 'human rights' might carry misleading implications for us. Having said this, many of the universal moral rights that I claim to exist are consistent with the list of human rights set out in the UN Declaration, and I would be happy if one effect of my work is to encourage people to take that declaration more seriously.

A chapter-by-chapter summary will provide an outline of the thesis in greater detail. Chapter 1 attempts to establish that moral rights generally, and universal moral rights in particular, are essential in moral theory. The claim that moral rights generally are essential in moral theory has been labelled by Joel Feinberg the moral impoverishment thesis, and the chapter is largely a defence of Feinberg's argument. In the course of defending Feinberg I

suggest that his own argument is inadequate in some important respects, and introduce new arguments to strengthen the moral impoverishment thesis. I support the claim that rights are essential because they are the best way to achieve self-respect and respect for others, and then engage in a defence of the claim that these two forms of respect are essential goods. The justification of this latter claim is made via a defence of Ronald Dworkin's account of the sacred, which is also used to establish the equality of persons. This establishment of equality opens the door to the possible existence of universal rights, and I suggest that universal rights play a particularly important role in a proper understanding of moral theory.

Notwithstanding these arguments, however, the chapter emphasises that rights, including universal rights, are necessary but not sufficient in morality, i.e. other moral concepts are needed.

Chapter 2 provides an account of the general strategy that is needed for the establishment of universal moral rights. I argue that if universal moral rights exist, they must in some sense be derived from universal moral values. These values must be universal in the sense implied by moral objectivity. Thus an exploration of whether there are in fact universal moral rights will require both an exploration of whether morality is objective, and of whether universal moral rights can be derived from objective moral values in the way I have suggested they must be. I point out that this strategy of rights justification, far from being completely new, places me broadly within the natural law tradition, and that my strategy has a particular affinity with that of Grotius. But I go on to criticise particular attempts to derive rights from natural law (including that of Grotius) in order to show that a new effort is needed.

Chapter 3 examines whether morality can be objective, and which version of moral objectivity is best. It argues that attempts to explain objectivity in metaphysical terms, with values as part of the 'fabric of the world,' have been unsuccessful, and that it is unclear how such a strategy could ever escape the argument from queerness advanced by John Mackie. This includes the strategy of drawing an analogy between values and secondary qualities, and the more naturalistic strategy employed by Peter Railton and others. I argue that a more

promising approach is found in the strategy of irrealist cognitivism, which emphasises the universality of reasons. Speaking of values in terms of reasons, and particularly shared reasons, provides us with a sort of objectivity which avoids the metaphysical tangles of other views.

Chapter 4 is a defence of a particular view of irrealist cognitivism, namely the contractualism of T.M. Scanlon. I first defend Scanlon's view of moral reasons. This includes a defence of both his view that desire has little role to play in our recognition of reasons or our motivation to act on them, and his view that at least some reasons possessed by a given agent exist external to that agent's awareness of them. I then defend his claim that the contractualist formula determines which acts qualify as right and which qualify as wrong. I argue that the justification of contractualism is aided by an appeal to Dworkin's account of the sacred, which can usefully be seen as an underpinning of contractualism. I also endorse the view that contractualism on Scanlon's account provides an explanation for how one agent's reason can give another agent a duty. Having reintroduced Dworkin's account, I then argue that it combines with contractualism to suggest that some reasons that agents have are reasons possessed not just by one individual or a small group but by everyone. I go on to suggest what some of these shared reasons are.

Chapter 5 is an account of my own rights view. It introduces rights into the Scanlonian framework that was defended, and partly revised, in the previous chapter. It does this by suggesting that rights are themselves a subclass of reasons, and that they are derived from reasons to reject given sets of principles in particular situations. Rights are defeasible, and their defeasibility is governed by the reasonable rejectability of given sets of moral principles. I argue that although there is no logical necessity that rights be derived in the way I have suggested, they should be so derived because the cumulative weight of arguments suggests that rights are an essential part of a proper understanding of moral theory. Some of these arguments have already been offered in the first chapter, and here I add others that apply more specifically to ways that Scanlon's contractualism benefits from the addition of rights. I go on to show that universal rights are derived from shared reasons in the same way

that non-universal rights are derived from reasons that are not shared, and that the story of the defeasibility of universal rights also parallels that of non-universal rights. I then offer what purports to be at least a partial list of universal rights, and consider two objections to my view.

A conclusion then briefly summarises what has been accomplished, and what remains to be done if the project is to reach the sort of fruition that I hope for it. It notes that ambitious though the thesis may be, it leaves significant questions about rights inadequately addressed or even wholly unaddressed. Some suggestions are made concerning the value of the thesis to rights theorists and others. The hope is expressed that the problem of universal moral rights justification has been addressed in a sufficiently interesting way to merit further discussion.

Chapter 1

The Importance of Rights¹

The thesis begins with an attempt to justify the intuition that moral rights play an essentially important role in moral theory. I go on to suggest that it is not only moral rights generally that are essentially important, but universal moral rights as well. The reason for beginning this way should be clear. In a thesis that discusses the justification of universal moral rights, we must first establish whether it is necessary (or even important) to speak of such rights at all. Once the first step of establishing the importance of rights is accomplished we can discuss justificatory matters safe in the knowledge that our project has been shielded from the charges of irrelevance or insignificance.

My argument for the importance of rights is essentially a defence of the moral impoverishment thesis advanced by Joel Feinberg.² Feinberg has argued that worlds without moral rights are morally impoverished, because beings in these worlds cannot enjoy respect from others, self-respect, and dignity. Although I think the claim about dignity is perhaps redundant in an argument that already speaks of respect from others and self-respect, I think there is something deeply true about the claim that there is a strong connection between moral rights and the two forms of respect Feinberg mentions. However, Feinberg's argument in support of these connections seems inadequate, as we shall see, and an important part of my discussion will be an attempt to improve upon his defence of the moral impoverishment thesis.

¹ A modified version of this chapter has been accepted for publication as 'Evil and the Need For Universal Moral Rights,' in the forthcoming *This Unweeded Garden: Evil in Theology, Philosophy, and Practice*, ed. Stephen Morris (Amsterdam: Rodopi, 2002). See Appendix A.

² 'The Nature and Value of Rights,' *Journal of Value Inquiry* 4 (1970), reprinted with postscript in Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), 143-155. All page references to this paper refer to the reprinted version.

My focus on Feinberg is not meant to signify an unawareness of or lack of respect for other literature on the subject that has been important in its own way. Many other theorists have made important contributions on the subject of the importance of rights. Robert Nozick has suggested that we need rights as 'side-constraints' in order to uphold the Kantian notion that individuals are ends in themselves. Ronald Dworkin thinks that rights are needed to embody the kind of deep moral principles that we need to adjudicate difficult legal cases. Joseph Raz thinks that we need rights in order to ground some duties, duties that are themselves essential in morality. Like Feinberg, James Griffin thinks rights are necessary as protections of certain goods, though while Feinberg speaks of respect from others and self-respect, Griffin prefers to speak of the (not wholly dissimilar) goods of personhood and equal regard for persons. I think there is much of value in these accounts, and several of the ideas presented by these thinkers are addressed in pages to come.³

Before proceeding I would like to offer an important clarification. One project I am not undertaking in this discussion is a defence of the claim that morality must be *right-based*. I will in fact argue in the following chapter that it is a mistake to try to base morality on rights. The issues of whether rights are important in morality, and whether morality is based upon rights, are two that are easily conflated but are best kept separate. Obviously, it is true that if morality is based on rights, rights would clearly be important. But rights can be important (even essentially so) in moral theory without being the most fundamental concepts in that theory, and this is in fact something I hope to show in the discussion that follows.

1.1 Feinberg's argument: promise

I will examine the promise of Feinberg's argument before moving in the next section to its limitations. But in order to discuss the argument at all we must be clear about what it

³ Nozick, *Anarchy, State, and Utopia* (Oxford: Blackwell, 1975), 26-53; Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977), 81-130; Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), 165-192; Griffin, 'Towards a Substantive Theory of Rights' in *Utility and Rights*, ed. R.G. Frey (Oxford: Blackwell, 1985), 137-160.

says. Feinberg understands rights to be closely connected with claims. We sometimes find ourselves in situations in which we feel it is appropriate to make claims to goods or titles, such as when we are owed something or when we feel we have been wronged. He thinks we have a claim just when we are in a position to make a claim. This account of having a claim may sound odd, but it serves the useful purpose of allowing us to say of persons that they have rights of which they may not be aware, as one can be in a position to claim without realising one is in such a position. Upon further examination some of our claims will be valid and some will not, validity being determined by the moral principles under which we are deliberating.⁴ Only those claims that are valid are rights. Feinberg thinks it is only by making claims (and thus by having rights) that individuals can have respect for others and self-respect. Thus it seems he is committed to drawing necessary empirical connections between rights and respect for others, and rights and self-respect, and a necessary analytic connection between rights and claiming. These are strong claims, and the argumentative burden on Feinberg is clearly high.

Despite the ambitious nature of Feinberg's argument, many have found it appealing. The main reason for its appeal, I think, has been its intuitive plausibility. It is easy to imagine that in a world devoid of rights individuals may well have their interests repeatedly encroached and gradually lose their sense of themselves and others as special. In our own world in which rights-claims are wildly proliferating, it seems all the more natural to think that rights must be our only resource to preserve respect in the ways Feinberg indicates. When we wish to help or save someone who is oppressed, we immediately appeal to their rights. Other moral concepts like goals or even duties are not so integral a part of the current moral lexicon of the wider world.

The promise of Feinberg's argument is boosted by the success he has had in rebutting some criticisms made against it, of which I will mention three. The first is an objection that was originally advanced by Marx, and a version of which has more recently found favour

⁴ The scope of the moral principles in question is left ambiguous in Feinberg. Perhaps he envisions moral principles which apply to everyone, but it is also possible he is thinking of different groups of

with some communitarians. Marx suggests that rights are both an expression and a reinforcement of individual selfishness, presumably because they concern individual desires.⁵ Similarly, some communitarians have suggested that since rights are claims we have against one another, their exercise tends to drive people apart rather than bring them together. Feinberg counters, though, that there is nothing necessarily selfish about individuals acting on their own desires, because there is no reason to think that all our desires are selfish. A psychological egoist might be convinced by Marx's objection, but almost no one else would be. Against communitarians Feinberg has two points. First, it is mysterious how acting on our rights could drive us apart from each other, since we assert our rights only when a wrong has already occurred. Second, it seems that a morality that features rights actually encourages us to behave with more civility toward each other, because we know that cases of conflict have a good chance of being resolved clearly and fairly. We are therefore less likely to resort to violence or some other desperate means of resolution.⁶

While Feinberg's replies to the communitarian position seem well-taken, it could be argued that he nonetheless underestimates the communitarian position. It seems likely that what is important to the communitarians is not just the danger that we might drive ourselves apart by *acting* on our rights, but that our very knowledge that persons have rights that they can assert against each other puts us all in a somewhat confrontational position. Indeed, it seems there is a small price to be paid by rights advocates in this regard. To understand morality in terms of rights is implicitly to admit of fractures in the moral community, and to admit that the communitarian ideal is probably unreachable. It is to admit that different individuals inevitably have such different aims that some friction in the moral community is inevitable. Reminding ourselves of the existence of this friction might make some people more suspicious of others and thus create more friction, but in the end I think the advantages of rights clearly outweigh this disadvantage.

persons deliberating under different sets of moral principles. It seems clear that he would want to say that the moral impoverishment thesis holds in either case.

⁵ Karl Marx, 'On the Jewish Question,' in *Karl Marx: Early Writings*, trans. Rodney Livingstone and Gregor Benton (London: Penguin, 1975), 211-241.

Another challenge Feinberg meets is one advanced by R.M. Frey, who argues that rights add nothing to morality not already captured by duties.⁷ The argument seems to have some initial plausibility, because the connection between rights and duties is universally acknowledged to be a very close one, and we might consequently wonder about the value of rights in the way that Frey does. But, as Feinberg replies, rights clearly add a measure of control by the right-holder over the duties in question. He can either hold the duty-holder to his duty or release him from it. I will argue shortly that this element of control plays an important role in explaining why rights are essential in morality.

A third objection to which Feinberg successfully responds is that if his theory of rights were put into practice we would have a world full of uncaring moral automatons. Everyone would do their duties and nothing more, and everyone would claim their rights and never show mercy. A similar kind of objection wrapped in feminist clothing has been made by Carol Gilligan, who suggests that a justice perspective (such as that exhibited by Feinberg and other rights thinkers) is an inherently masculine one that neglects the feminine care perspective, which emphasises connection and concern for relationships.⁸ Feinberg answers these objections by pointing out that he has said only that rights are necessary in morality, not that they are sufficient. Rights play a vital role in morality, but they must be complemented by other moral considerations, such as compassion, whose content is decided by our values and principles. There is no reason we cannot emphasise both justice and caring in morality. In the context of rights, the element of caring should manifest itself in our willingness to sometimes do more than duty requires, and to sometimes release others from their duties toward us.

The point that moral rights, even if necessary, are not sufficient in morality, is an extremely important one. Not only does it help Feinberg to explain how a rights view can be

⁶ Joel Feinberg, 'In Defense of Moral Rights: Their Social Importance' in *Freedom and Fulfillment* (Princeton, NJ: Princeton University Press, 1992), 243.

⁷ R.M. Frey, *Interests and Rights: The Case Against Animals* (Oxford: Clarendon, 1980), 12. For Feinberg's reply see Feinberg, 'In Defense of Moral Rights: Their Bare Existence' in *Freedom and Fulfillment*, 204.

integrated with a caring perspective, but it also explains why we need legal rights in addition to moral rights. It seems that for each moral right that requires mechanisms of enforcement, there will need to be a legal right which corresponds to it, for only legal rights enjoy connections with such mechanisms. Legal rights have the distinct advantage of being backed by the power of the law, including police enforcement of that law. This very fact, though, has worried some thinkers about moral rights: if legal rights can do all the work, then are moral rights not redundant? But the worry is misplaced, because legal rights would be arbitrary without the backing of moral rights. It is moral rights, after all, that are derived from our moral principles. This helps us to answer another objection regarding moral rights and legal rights, namely that moral rights are an incoherent concept mistakenly based on a model of legal rights. The objection states that legal rights are coherent because they enjoy the backing of law, but moral rights are incoherent because they fail to enjoy an analogous backing.⁹ As Feinberg points out, though, there seems nothing incoherent about the claim that moral rights are backed up by moral principles. So far we have been given no reason to think the analogy between legal rights and moral rights cannot hold in the way that Feinberg suggests. We will see more clearly over the course of the thesis how it is that morality can serve as a foundation analogous to law.

At this point I will summarise the respects in which I consider Feinberg's argument to be promising. First, I find plausible the claim that we must have rights in order to enjoy respect from others and self-respect, and I will offer an argument to support the claim shortly. Secondly, his account of the nature of rights is promising. I endorse his thoughts on the way that rights relate to claims, on what claims are, and on how the validity of claims is determined. My endorsement of the Feinberg position, then, is extensive. But with that said,

⁸ Carol Gilligan, *In a Different Voice* (Cambridge, MA: Harvard University Press, 1982), 28-35. There is a useful discussion of Gilligan in Evan Simpson, 'Rights Thinking,' *Philosophy* 72 (1997), 29-59. For Feinberg's response to this criticism see 'The Nature and Value of Rights,' postscript, 156.

⁹ This sort of objection has been raised in various forms by Bentham, William Nelson, and L.W. Sumner. Bentham, *The Works of Jeremy Bentham*, Vol. I, ed. John Bowring (Edinburgh: William Tate, 1843), 218; Nelson, 'On the Alleged Importance of Moral Rights,' *Ratio* 18 (1976), 145-155; Sumner, *The Moral Foundations of Rights* (Oxford: Clarendon, 1987), 119. For Feinberg's response see 'Bare Existence,' 212-219.

let us now turn to a discussion of the limitations of his argument. This will give us a clear idea of what needs to be done in order to make the argument work.

1.2 Feinberg's argument: limitations

The first limitation concerns Feinberg's mention of the goods of respect for others and self-respect. Though he does not say so, I think the only reasonable conclusion we can draw about Feinberg's treatment of these goods is that he considers them to be in some sense essential.¹⁰ This of course leads us to wonder both why they are essential, and in what sense they are so. To be fair, Feinberg does offer us a reason for why self-respect is essential, namely that we need to have self-respect in order to be worthy of the respect of others. Intuitively this seems right. Not only do we have difficulty respecting someone who fails to respect herself, but we feel justified in having this difficulty. This is the case because we operate on the (quite reasonable) assumption that people know themselves better than they know others. If I perceive about someone (especially someone I do not know intimately) that she has no respect for herself, then I am inclined as a default position to think she is probably not worthy of my respect. This default position is defeasible, because the person could be mistaken in her self-perception, but it is a reasonable default position nonetheless.

Feinberg's justification of self-respect as an essential good, of course, merely shifts the burden all the more onto justifying respect from others as an essential good. Unfortunately Feinberg fails to offer such a justification. We might be tempted to say that the justification could proceed in the reverse direction of the previous one – that we need to have respect from others in order to have self-respect – but this is unsatisfactory for two reasons. First, since each justification would be made in terms of the other the two justifications would be guilty of

¹⁰ I will speak of 'essential goods' instead of the more commonly-used term 'intrinsic goods.' It seems that what is important about the concepts in question is that they cannot exist without being good. My conception of essential goods is more similar to John Rawls's conception of primary goods than it is to conceptions of intrinsic goods. See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972), 62. Recent discussions of intrinsic goods include John O'Neill, 'The Varieties of Intrinsic

an unhelpful circularity. Secondly, the latter justification seems dubious on empirical grounds. It seems possible to respect oneself even in the face of widespread disrespect from others, and indeed there is something heroic about this. Stoics are an example of persons who valued this kind of self-reliance and were able to practise it.

A more promising way to justify the second claim is to argue that respect for others is an intrinsic good because every individual is essentially valuable. This method of connecting the value of respecting a person x with the value of that person x should be uncontroversial, because if x is valuable then she merits respect by definition. The controversy, then, surrounds whether we can indeed establish that every individual is essentially valuable. I think the case can be made by combining three different but compatible arguments. Gregory Vlastos has suggested that when we consider the value of human beings we make a distinction between human merit and human worth.¹¹ He conceives of human merit as consisting of all the features in respect of which agents can be evaluated. Human worth, by contrast, is the value everyone has simply by virtue of being human. This distinction is a useful one insofar as it allows us to acknowledge the obvious fact that individuals may vary greatly from each other in terms of attractive qualities, yet it allows us nonetheless to preserve the idea that each human being possesses an essential value which cannot be taken away.

The problem comes, though, when we try to justify the claim about worth. Some have suggested that all individuals have equal worth because of a particular quality they possess, such as rationality or the ability to feel pain. But this strategy has not been very successful, because whatever quality we choose is in danger of seeming rather arbitrary, and will invariably exclude some humans we would intuitively wish to include. For a different approach to the problem we can turn to an argument Feinberg makes in a work, *Social Philosophy*, that followed 'The Nature and Value of Rights' by a couple years. There he says that, when we think of human worth, it is better to see it not in terms of a quality possessed by persons, but in terms of what is attributed to persons by others through an attitude of

Value' in *Monist* 75:2 (1992); also Ken O'Day, 'Intrinsic Value and Investment' in *Utilitas* 11:2 (1999), 194-214.

respect.¹² This attitude of respect is groundless in the sense that it is not justifiable in more ultimate terms. However, it comes about when we regard others as centres of experience, or foci of subjectivity. Feinberg says

It may well be, however, that most normal people are disposed to fall into this attitude whenever their attention is drawn to certain traits of all humans, or when they acquire the habit of looking at (or conceiving) their fellows in a certain way. The traits thus attended to may not constitute logically coercive reasons in support of the attitude of Kantian respect (that may be too much to hope for), but a thorough awareness of them can make the attitude seem less mysterious and actually lead people to acquire it – a result almost as good!¹³

I quote this passage directly because it is both intriguing and somewhat obscure. It is unclear what sort of claim Feinberg is trying to make when he says we are ‘disposed to fall into this attitude.’ Is this an empirical claim or a normative claim? If it is a normative one, is it an appeal to moral intuition, to self-evidence, or to moral deliberation? It is unclear what Feinberg is saying, but which one should *we* choose?

I think that a promising way forward on this issue has been pointed to by Ronald Dworkin in his account of the sacred.¹⁴ Dworkin argues that each life is sacred in the sense that it is inviolable, and that this is so because the complex processes that create and shape each life are themselves wonderful and valuable. It is not entirely clear what Dworkin himself understands inviolability to entail, but Vinit Haksar offers the promising suggestion that inviolability should amount to irreplaceability, e.g. we cannot rectify the loss of one life by creating another life, or even multiple new lives.¹⁵ This suggestion fits well with the Dworkin account, which holds that the complex combination of processes which composes

¹¹ Gregory Vlastos, ‘Justice and Equality’ in *Social Justice*, ed. Richard B. Brandt (Englewood Cliffs, NJ: Prentice-Hall, 1962), 31-72.

¹² Joel Feinberg, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), 88-94.

¹³ *Ibid.*, 93.

¹⁴ Ronald Dworkin, ‘What is Sacred?’ in *Life's Dominion* (London: HarperCollins, 1993), 68-101. Dworkin’s argument is made in the context of the moral permissibility of abortion, but need not be confined to that context. There is an irony in the usage to which I put Dworkin’s argument, insofar as he presents his discussion of the sacred as an alternative to rights-talk, while I am suggesting that it can be part of the basis for universal rights. But this is no more than an irony: Dworkin’s account is not incompatible with rights.

each individual life is unique, and once lost cannot be replicated. What are these processes? Dworkin lists three kinds that compose human lives: the evolutionary natural processes that produce new lives; the complex cultural processes in which human beings participate; and the process by which individuals evolve through the decisions they make.¹⁶ Dworkin believes that these processes apply to groups as well as individuals, so that, e.g., species too can be regarded as sacred. While I believe this claim to be promising, I will myself focus on the implications of his account for individuals. Because each life exhibits the features he lists above, each life is valuable; and because each life realises these features in a unique way, each life is sacred. We know that the processes and their various complex permutations are valuable because we wonder at them. Thus the processes are, in the most literal sense, wonderful.

I find this account promising largely because of its phenomenological plausibility. It seems that we do wonder at the processes, both natural and human, that compose each life. This is why it is possible even for persons of a secular outlook to regard a birth as a sort of miracle: the natural processes involved are so awesome as to inspire a sort of mystical reverence. It also explains why, upon the death of a person who has lived long and achieved much, their life can seem to take on a sort of mythology of its own. The full weight of the processes (especially the human processes) that made up the individual's life can seem overwhelming, and can seem to give that person a towering stature whose dimensions seem greater than human. An advantage of Dworkin's account is that it helps to explain these quasi-religious feelings of wonder to the satisfaction of those who find overtly religious commitments philosophically unacceptable. A more obvious advantage is that it helps to explain the common intuition that each life is of some value.

Dworkin's account of the sacred has been criticised in several ways, most of which I will not address here, but I would like to defend his view against two criticisms which are perhaps among the most fundamental. The first is that it is not immediately clear why the

¹⁵ Vinit Haksar, 'Collective Rights and the Value of Groups' in *Inquiry* 41 (1998), 22.

processes Dworkin speaks of can be said to be valuable. At one point Dworkin suggests they are valuable because the products they yield are valuable, but it seems this cannot be correct, because elsewhere he claims the products are valuable in virtue of the processes that comprise them. To claim both is to be guilty of an unedifying circularity. Elsewhere in Dworkin's discussion it seems that it is the complexity of the processes that gives them their value. Yet if complexity is a necessary condition for a process being valuable, it seems unlikely to be sufficient. AIDS is complex but we do not consider it valuable as a result. The Third Reich was an enormously complex political entity, but to ask whether it was valuable just seems an entirely separate question.

We might make progress on this issue if we consider more closely the wonder we feel at the natural and human processes in question. Part of what we marvel at does seem to be the complexity of the processes. To participate in such intricate and powerful processes is to feel we are becoming part of something greater than ourselves, and this inspires our awe. But it is also true that we can, to some extent, wonder at the sheer complexity of the Third Reich, abstracting its structural complexity from its moral horrors. The important point, though, is that our wonder at the complexity of the Third Reich seems importantly different from our wonder at the processes Dworkin mentions, and that this reveals something important about why Dworkin's processes are valuable and the Third Reich is not. Any wonder we might feel at the complexity of the Nazi regime is surely only an intellectualised appreciation for its structure and order, recognising that such strict order might, fashioned in the right way, be a laudable feature of other human pursuits. But our wonder at the processes Dworkin mentions seems something more than this. It may well contain the sort of intellectualised appreciation already mentioned, but it also seems to contain a normative endorsement that is missing from the previous example. We admire Dworkin's natural and human processes because they are not only complex but good for us: like the two forms of respect, they make a

¹⁶ I leave open the possibility that there could be other sacred processes as well, but throughout the thesis I will be content to endorse these three.

special contribution to our well-being.¹⁷ This is why the wonder we feel for them *feels* different from the wonder we might feel at the complexity of the Third Reich. It is the positive contribution these processes make that sets them apart from the Third Reich example, that explains the normative element of our wonder at them, and ultimately that makes them valuable in a way that the Third Reich is not. But if this is the case, then why do we not similarly wonder at the two forms of respect? It is true that the two forms of respect contribute to our well-being, but they seem to be less complex than evolutionary processes or human participation in culture. It seems to be the case that we wonder at *x* when *x* is sufficiently complex, and that we wonder at it in a full and complete way when (and only when) it is both complex and contributes to our well-being. It is in this way that an examination of wonder helps to explain why Dworkin's processes are valuable.

This discussion leads to a second, related concern, that of limiting the scope of beings whose lives are sacred. So far we have discussed Dworkin's processes only as they apply to humans, but the scope of applicability might be extended further. It is unclear how wide a scope Dworkin himself has in mind; he may envision only human beings as sacred, or he may wish to include at least some higher animals as well. Depending on how we read him, the scope could possibly be much wider, for if a given entity needs only to participate in one of the three kinds of processes he mentions, then even non-living things will qualify as sacred. Not only do humans and animals participate in evolutionary processes, but so do trees, plants, mountains, rocks, and just about everything else. Is everything sacred? This is perhaps going too far. The obvious way in which to limit the scope of sacred entities is to raise the bar of qualification by demanding that sacred entities participate in more of Dworkin's processes than just evolutionary ones. If we require that beings participate in all three kinds of processes, it seems that only human beings will be sacred, and even then perhaps not all humans, for we would need to find ways to include infants and disabled humans. Alternatively we could require that participation in two out of the three processes is

¹⁷ A similar explanation for the value of Dworkin's processes is offered by Linda Barclay, though my argument in support of this conclusion is my own. See Linda Barclay, 'Rights, Intrinsic Value, and the

sufficient. I will not attempt to place the threshold here, or to deal with the inevitable tricky borderline cases that would arise. My own inclination, for what it is worth, is that all humans and at least some animals are sacred in the Dworkin sense. Until it is tailored by further argument, Dworkin's view is compatible with this conclusion but does not entail it.

My endorsement of Dworkin's account of the sacred has wide-reaching implications for the argument of the thesis as a whole. It will serve as our fundamental account of the origin of value, and it will play a crucial role in the rights view I advance in later chapters. We will see in Chapter 4 that it helps to justify the moral theory I eventually adopt, and that it indicates the shared reasons we have. The implications for this in Chapter 5 are that it ultimately indicates the content of our universal rights. But this is all in the future. The argument for now is that Dworkin's account justifies the claim that each individual life has essential value.

If Dworkin's account is successful in doing this, then I think we are similarly successful in establishing the essential value of both respect from others and of self respect. To review our argument, if each individual life is valuable, it follows simply that we should respect each individual. This does not mean we need to respect everyone equally, for different individuals will have different degrees of *merit* (see Vlastos). The equal *worth* of each individual does mean, however, that it is an essential good that we show some (at least minimal) respect for others. One implication of the essential good of respect for others is that it is essentially good for others to respect me – but they will not be able to do this very completely if I do not show myself respect. So the establishment of the essential good of respect for others yields the essential good of self-respect. Interestingly, in our attempt to justify Feinberg's claims about two essential goods, we have found a third that underpins them, namely the essential good of each individual life.

We still need to clarify, though, what is meant by 'essential good' in these cases. The term is ambiguous, and different thinkers have meant different things by it (and the same is true of the term 'intrinsic good'). When I say that individual lives, respect from others, and

self-respect are essential goods, I mean that they are goods whose absence would cause life to be seriously deficient, and which cannot be compensated for by any other goods or combination thereof. I have tried to argue above why this is so for each essential good of which I have spoken. It is important to note that my concept of essential value is weaker than that of some others. I am not suggesting that these goods have value independently of the valuation of agents, but merely that we can justifiably agree that these goods are good for agents generally. I hope I have said enough to make this convincing in the case of the three goods I have discussed: our recognition of their essential goodness is underpinned by the sense of wonder we feel at the processes constitutive of each human life, and the relations we recognise that the value of each human life has to the value of respect from others, and that the value of respect from others has to the value of self-respect. I will have more to say about the nature of essential goods in Chapter 4, but I think that the account I have provided already is sufficient for our present purposes.

We have seen that one problem Feinberg encountered was an inadequate explanation of the essential goods of respect from others and self-respect. Feinberg also runs into trouble, though, in his attempt to make the very strong connections he needs between rights and claiming, rights and respect from others, and rights and self-respect. As we have seen, he appears to envision the first connection as a necessary analytic one, and the latter two as necessary empirical connections. The problems Feinberg encounters in trying to establish these connections are brought out well in a recent paper by Derrick Darby, so I will discuss Darby's criticisms at some length.¹⁸ However, in my discussion of Darby I will argue that Feinberg's account at least hints at the resources needed to overcome these criticisms. After establishing this I will then try to add the required missing pieces to a defence of the moral impoverishment thesis.

As I have said, Darby questions the links Feinberg tries to forge between rights and three entities: claims, respect from others, and self-respect. Let us consider each connection in

¹⁸ Derrick Darby, 'Are Worlds Without Rights Morally Impoverished?' in *Southern Journal of Philosophy* 37 (1999), 397-417.

turn, beginning with the one said to exist between rights and claims. As we have seen, Feinberg thinks that to have a claim is to be in a position to claim, and to have a right is to have a justified claim, justification being determined by the moral principles under which we are working. As Darby notes, this leaves us wondering just how to delineate the necessary and sufficient conditions for being in a position to make a claim. Darby himself offers two suggestions for how to do this, the first of which he calls the 'sanction proposal' and the second the 'moral proposal.' His sanction proposal says that we have a basis to make a claim – or to complain, which amounts to the same thing – when and only when others cannot ignore us without risking external sanctions. Darby notes a few unsatisfactory consequences of this proposal, and I think it is also unsatisfactory in the sense that it fits with Feinberg's own thought rather uneasily. There is little indication that Feinberg would wish to explain being able to make a claim in terms of sanctions, external or internal.

More promising is Darby's moral proposal, which states that we are in a position to complain when and only when the recognition of our claim is called for by moral principles. Recognising that this proposal is still a bit vague, he bifurcates it into an MP1 and MP2. MP1 suggests that we have a basis to complain when and only when others cannot ignore us without committing a moral wrong, while MP2 suggests we have such a basis when and only when we would be morally justified in complaining. I think MP2 is the proposal closest to Feinberg's own thought. It parallels Feinberg's treatment of justification when he speaks of rights as justified claims, where justification has the 'positive' quality of MP2 and not the appeal to wrongness found in MP1. The fact that MP2 is closest to Feinberg's own thought does not mean it is our only possibility, but I think this consistency gives it priority of consideration.

Darby thinks the problem with MP2 is that it means Feinberg must show that individuals are morally justified in complaining only when their moral rights have been violated. Feinberg cannot simply assume this is the case, and rights sceptics will say that other moral concepts can be invoked to explain what will qualify as justification. But I think Darby is mistaken that Feinberg must appeal to rights in order to explain when we are

justified to complain. As I have said above, I think a plausible interpretation of Feinberg's treatment of this issue is that it parallels his treatment of the necessary and sufficient conditions for a justified claim. If this is true, then Feinberg would say that we are in a position to make a claim only when we are justified in doing so by our wider moral principles (remaining neutral for the moment about what these principles are). It is not clear why Darby thinks Feinberg must frame *these principles themselves* in terms of rights. An alternative formulation of moral principles is offered by the Scanlonian account I will endorse in Chapter 4.

Let us now turn to the connection between rights and respect from others. It is Feinberg's view that we must have rights if we are to enjoy respect from other people. The first point to note here is that there could be stronger or weaker interpretations of this claim. He might mean that we must have rights if we are to enjoy *any* respect from others (this would be the strong reading). Alternatively, he might mean that we must have rights in order to enjoy a sufficiently high degree of respect we are due (weak reading). He could also be interpreted as saying that rights confer on us a certain kind of respect, different from the respect we could otherwise enjoy. The main restriction on our choice will be that the sort of respect we are connecting with rights must be of very great importance, such that morality would be clearly deficient if it did not allow each agent to enjoy it.

Feinberg does not say much about the concept of respect with which we are working. Darby suggests that we utilise the concept of recognition respect, whereby a being is worthy of respect by virtue of some valuable fact or set of facts about it. For example, we might say that beings are worthy of respect by virtue of their rationality, their sentience, etc. Darby thinks that if we accept the validity of recognition respect it follows that there cannot be a necessary connection between rights and respect. Recognition respect, depending on the criteria we use for respectability, allows for the possibility that non-persons could be objects of respect. But if there is a necessary connection between rights and respect (via claiming), only persons could be objects of respect, because only persons are able to make claims. Since

the consequences of the two are incompatible, our acceptance of recognition respect leads to our rejection of Feinberg's claim about the necessary connection between rights and respect.

It is unclear whether we should accept recognition respect as the concept of respect with which we should work. As I have mentioned, Feinberg has argued in a later work that if we are concerned to speak of respect for all persons, then this respect might have to be seen as groundless in the sense that it does not make reference to any property individuals possess. But even if we do accept recognition respect I do not think Darby's argument accomplishes what he wishes. This is because it both implies and depends on the idea that recognition respect allows us to assign importance to any fact or set of facts we wish. Darby seems to conceive of the choice as arbitrary, but I doubt Feinberg would agree, and more importantly, *we* should not agree. Of course it is empirically true that people might respect each other for any number of reasons. One person might be respected by others because of his social status (Darby actually uses this example). Another might be respected because she is beautiful. The legendary Kim Il Sung of North Korea is respected in his homeland for allegedly being able to kill entire battalions of Chinese nationalists by snapping his fingers. But there is no reason to think that all of these reasons to respect others are morally equal. Just as Feinberg invokes moral principles in his explication of justified claims, so it seems appropriate for us to invoke them in the present context. It seems entirely possible, and also intuitively plausible, that the only reasons for respecting others that will be endorsed by our moral principles will be reasons that refer to those individuals as right-holders. In fact I think we have more than just intuition to appeal to here, but I will delay that argument for the moment so that we can consider Darby's other criticisms.

Before proceeding, though, I must admit that I do have some sympathy for a consideration that may be driving Darby's objection about respect for others. Darby seems to be concerned that Feinberg's treatment of respect is prone to a problem Kant also encounters, which is that it cannot extend to beings we intuitively wish to endow with respect. Here I am thinking of animals as well as infants and mentally impaired humans. It is true that these beings are not claim-makers, and I share the unease that many people feel about denying

them respect. I think that for these beings the solution lies in appealing to the third essential value we discovered, the value of each individual life. The same features that Dworkin has suggested that cause us to feel wonder or awe at the life of each individual may apply not only to infants and mentally impaired humans, but to many animals as well. We do wonder at the evolutionary processes that produce new humans, even if they suffer from mental impairment or have the limitations of an infant. We also wonder at the same processes by which many animals are produced. We wonder at the process of community and language that an infant will participate in, that (at least some) mentally impaired individuals do participate in, and also in the processes of communities in which complex animals participate. Equally, we wonder at the process of internal personal creation that an infant is already undergoing, that many mentally impaired persons can forge, and that even intelligent animals can participate in. Admittedly, these beings might participate in these processes to a lesser degree than fully-functioning, adult humans. Nonetheless Dworkin's account of the value of individual lives does not seem to be closed off to infants, disabled humans, and (some) animals, and this suggests to us that these beings might correspondingly enjoy the protections offered by rights.

Let us now return to Darby's criticisms and look at the connection between rights and self-respect. These criticisms proceed along lines largely parallel to those concerning respect from others, and my response will be similarly parallel. Darby once again points out that it is empirically the case that persons might respect themselves for any number of reasons, some of which might concern rights but many of which do not. Again, I respond that there is no reason to think that all of these reasons will be endorsed equally by our moral principles. It is possible, and again intuitively plausible, to think that our moral principles will endorse only those reasons related to our possession of rights. Intuitively, there seems something more noble about respecting oneself because one is a right-holder rather than at least most other reasons one could think of.

Perhaps more importantly, it is in the discussion of self-respect that the Feinberg argument does contain a strong empirical element. He claims that people who lack rights (or

at least lack consciousness of their rights) tend to develop characters that are servile and even duplicitous. It is having rights and being conscious of them, by contrast, that allows us to 'stand up like men' and 'look others in the eye.'¹⁹ As a general descriptive observation about persons, I think the claim about servility is quite plausible. Darby offers counter-examples which are not particularly convincing: he claims that Frederick Douglass and Harriet Tubman are examples of persons who lacked consciousness of their rights, yet had self-respect. It is unclear, though, whether they or others like them were lacking in consciousness of their moral rights. To be sure they lacked legal rights, but it could well be they sincerely believed themselves to have moral rights which they were fighting to get others to recognise.

Still, it is important to recognise the inherent limitations of the sort of empirical argument Feinberg has advanced here. Even if there is quite a bit of evidence to support the claim that lack of consciousness of one's rights leads to servility and lack of self-respect, it is a very difficult claim to prove. As Darby points out, it does not seem to be the sort of claim that can be proved by philosophical argument. Even if we established through extensive field research that each case of lack of consciousness of one's rights is accompanied by servile behaviour and lack of self-respect, we still would not have established a causal connection between the two, and it is mysterious how we could establish such a connection. So *proof* of Feinberg's claim may be too much to hope for. Yet it seems even less acceptable to simply discard this very plausible observation about human beings. One needs only to travel to countries suffering under regimes that deny individual rights in order to see the prevalence of the sort of behaviour and mindset of which Feinberg speaks. The point for now is just to establish an initial plausibility for Feinberg's empirical claim – I will have more to say in its defence shortly.

Let us take stock of what we have learned about Feinberg's argument in order to better see how we should proceed. We have seen that his understanding of the nature of rights is promising, and that his claim that we need rights in order to enjoy self-respect and respect from others is intuitively appealing. We have seen that his account implies that self-

¹⁹ 'The Nature and Value of Rights,' 151.

respect and respect from others are essential goods, and that these goods can be justified, and are in fact based upon a third essential good, the value of each individual human life. We have also seen that the coherence of Feinberg's account can be defended against the criticisms of Darby by making appeals to foundational issues such as the moral principles that Feinberg himself invokes in a different context. It seems both possible and intuitively plausible that the only justified reasons to respect oneself and have respect for others make reference to the status of individuals as right-holders. In addition, Feinberg makes an intriguing empirical claim which states that individuals who lack consciousness of their rights lack self-respect and develop characters that are servile. The promise of Feinberg's account has so far weathered the storm, but more must be said if we are to connect rights and the two forms of respect in the way his argument requires.

1.3 Helping Feinberg

In this section I will try to address crucial questions that remain about the moral impoverishment thesis. First and foremost, we must wonder if there is any reason to believe that our moral principles *actually will* endorse rights considerations in the way I have suggested they might. Secondly, more must be said about the empirical argument if we are to get it to do any work in our larger defence. It is still mysterious just how the empirical argument relates to the rest of our defence, and just how plausible it is. The two main questions I have raised are, I think, quite closely related, and I will attempt to address the first by answering the second.

Our revised version of the moral impoverishment thesis states that our moral principles endorse rights-related concerns as a privileged means of justified self-respect and justified respect from others. Now, for reasons we shall see, a full-blown proof that rights and the two forms of respect connect in this way may be too much to hope for. Instead I will argue that our revised moral impoverishment thesis can be established as highly probable. I will further narrow the ambitions of the argument by focusing mostly on self-respect rather

than respect for others. Since we have seen that self-respect is an essential good, establishing a highly probable connection between rights and justified self-respect will be sufficient for our present purposes. It will justify the continued emphasis on rights that the thesis displays, and will be sufficient until we are able to revisit the importance of rights in Chapter 5.

The argument makes use of several different claims, and it is useful to lay these out at the outset. The claims are familiar from our previous discussion, with the addition of a bifurcation of both claims that make up the revised moral impoverishment thesis – the claims about self-respect and respect from others – into both weak and strong versions.

Empirical Claim (EC): we need rights (and awareness of them) in order to have self-respect, because lack of awareness of one's rights leads to servility.

Normative Claim 1 (NC1): rights enjoy a privileged connection with justified self-respect.

Weak version (Weak NC1): our moral principles endorse rights as the best way to achieve self-respect.

Strong version (Strong NC1): our moral principles endorse rights as the only way to achieve self-respect.

Normative Claim 2 (NC2): rights enjoy a privileged connection with justified respect from others.

Weak version (Weak NC2): our moral principles endorse rights as the best way to achieve respect from others.

Strong version (Strong NC2): our moral principles endorse rights as the only way to achieve respect from others.

My argument for the importance of rights is that we can establish Weak NC1 as highly probable by means of a conjunction of EC and a moral intuition. I will also argue that this in turn takes us some way toward establishing Weak NC2, and perhaps also Strong NC1. But I think that establishing Weak NC1 as highly probable is sufficient for our purposes, and that will be my primary goal at present.

Our argument concerning Weak NC1 will be made in two broad steps. The first step is to establish that it is highly probable that our moral principles will endorse the fact that we are right-holders as *a* reason (possibly one among many) to respect ourselves. The second step is then to argue that not only is there a rights-related reason to respect ourselves, but in fact rights-related reasons are the *best* reasons to do so. Let us now consider the first move. This first step relies crucially both on the plausibility of EC, and also on the plausibility of the

claim that intuitively there seems something noble, or at the very least morally legitimate, about respecting oneself because one is a right-holder. I will say little about this moral intuition, only that I feel it strongly and I think that most people probably feel the same way. Intuitively we do feel that being a right-holder is a legitimate reason to respect oneself, just as our intuitions tell us that being blonde is not a good reason. While our intuitions are not decisive on moral matters, it seems they should not be completely discarded either, so the supporting role that our intuition is playing here seems to be appropriate.

If we accept both EC and the moral intuition of which I have spoken, this means that we believe that being a right-holder does in fact give one self-respect, and that intuition endorses the idea that this reason for having self-respect is legitimate. In such a case it does seem likely that Weak NC1 will be true. Admittedly, an acceptance of Weak NC1 is not entailed by an acceptance of the conjunction of EC and the moral intuition. It is possible that, although being right-holders does give us self-respect and our moral intuitions suggest this is legitimate, nonetheless a proper understanding of moral principles will suggest that they do not endorse our status as right-holders as a legitimate reason to respect ourselves. But such a scenario would require that we have sufficiently powerful reasons to contravene our intuitions in this case, and I cannot see what those reasons would be. Certain opponents of rights, such as some communitarians and some feminists, might insist that there are such reasons, but against them I refer back to Feinberg's responses to their criticisms of the moral impoverishment thesis. In the absence of such reasons, it seems we are justified in saying that it is highly probable that our moral principles will endorse our status as right-holders as a legitimate reason for respecting ourselves.

I would like to pause before moving to the second step of the argument, because some might think I have been too quick to accept EC. Indeed, I have argued only that Darby's objections to EC were unconvincing; perhaps there are better objections to be found. I have said that I am inclined to accept EC, but also that it is not the sort of claim that can be proved by philosophical argument. How, then, might we strengthen the case for it? I think it can be strengthened by offering further empirical claims that will serve as explanations for why EC

is true. If these further claims are as widely acceptable as I suspect they are, then they will make it difficult to doubt the truth of EC. Obviously this discussion will take us on a slight digression from the argument in which we have been engaged, but I think it will be worthwhile. It should be noted that my arguments in favour of EC apply only to rights we are aware of having. As we have seen, it is possible to have rights we are not aware of, but generally it seems likely that under normal circumstances we will be aware of at least some of the rights we have.

A crucial feature of rights to keep in mind when we discuss EC is the intimate relation they have to claiming. Rights are valid claims, and correspondingly the way that rights are exercised is through the activity of making claims. I think that one crucial feature relating to self-respect comes from the activity of making claims, and another comes from the knowledge that we have claims. Let us consider the activity of claim-making first. This activity requires that we assert ourselves, and furthermore our belief in the validity of our claims encourages us to do so in a self-confident manner. The consistent acts of self-assertion required by claims (and by extension rights) seem likely to help the agents who make those claims (and have those rights) to acquire and maintain self-respect. Why this connection between self-assertion and self-respect? I would speculate that self-assertion (especially that which we feel is worthwhile or justified) is a natural antidote to the insecurities and even despair that come from knowing we are a seemingly-insignificant, small part of a vast and confusing world. From the cosmic perspective that we all sometimes take²⁰, our individual lives can seem absurd and devoid of meaning. By asserting ourselves, and especially by believing ourselves to be making assertions others will find important or interesting, we are standing up and demanding to be recognised as important entities. Doing so on a consistent basis, and also knowing that one can do so on a consistent basis, help to cultivate the sort of self-respect that we have identified as an essential good. In addition we also remind others of

²⁰ My discussion here is influenced by Sartre's notion of forlornness in his 'Existentialism is a Humanism' in *Existentialism* (New York: Philosophical Library, Inc., 1947), reprinted as 'Free Will, Self-Construction, and Anguish' in *Reason and Responsibility*, ed. Joel Feinberg (London: Wadsworth, 1996), 456-463.

our value, which helps to explain the connection Feinberg has said exists between self-respect and respect from others.

I have indicated a second way in which we can explain why it is rights and self-respect seem to be connected, a way related to the knowledge that we have claims (and rights). The important consideration here is a point that we found Feinberg making in a different context: rights and claims give us an important element of control over those who have corresponding duties. We can either hold others to their duties or release them. I think it is likely that our experience of this sort of control, especially on a consistent basis, helps us to see ourselves as significant individuals and to respect ourselves accordingly. Our experience of this sort of control provides an antidote, parallel to the one provided by self-assertion, to the lost or neglected feeling we might sometimes have in the complex and bewildering realm of human relations. As in the prior case, others are reminded of our value just as we are: in this case they are reminded of it every time they have a duty toward us, or see that someone else has such a duty. Yet there is no danger of megalomania here, because the tables will sometimes be turned, and we will owe duties to others. What results from these interactions is a community in which each individual can feel that she is an important entity, yet not more important (in terms of moral worth) than others. Together I think the two considerations I have advanced help to make EC more plausible, and help to explain why it is so often the case in our world that persons without rights lack self-respect, and persons with rights do not.

Let us now return from our digression, perhaps more comfortable in our belief of the truth of EC than we were previously. So far I have argued that it is highly probable that our moral principles will endorse the claim that our status as right-holders gives us a reason to respect ourselves. But, as we have seen, even Weak NC1 demands more than this: we must show that our moral principles indicate that the *best* reason to respect ourselves will make reference to our status as right-holders. Again, my aim is not to prove this claim, but to demonstrate that it is probable enough to believe with reasonable certainty. It seems the best (and perhaps only) way we can do this is simply to compare rights-related reasons with other

likely reasons for legitimate self-respect. Darby suggests several reasons that he takes to be at least as legitimate as rights-related reasons for yielding self-respect: the fact that one has a certain social status, that one is a human being, that one is a person, that one can act for reasons, or that one lives in accordance with personal or moral standards of conduct.²¹ I will take this to be a promising list of rivals to rights-related reasons regarding self-respect, and consider them one at a time.

Darby suggests that the fact that we have a certain social status might be a good reason to respect ourselves, but this first suggestion seems his most dubious one. I think that intuitively most people are inclined to regard this basis of self-respect as superficial and ultimately invalid. It seems that in order to be a good reason to respect oneself, and in order not to seem arbitrary, a reason must make reference to one or more of our essential character traits. P's reason for having *self*-respect must make reference to P's genuine *self*, and I have argued that rights-related reasons do this. But social status connects, if at all, only very loosely with our essential selves. Neither Donald Trump nor the Sultan of Brunei are paradigms of human merit, nor are the poor of the Third World necessarily deserving of their fate. Our social status depends largely on chance, and thus seems an arbitrary basis for self-respect.

It might be contended, though, that the preceding argument has presupposed a contemporary Western view of the way in which social status is achieved. It is true that Plato, in the *Republic*, offered a vision of a society in which an individual's social status was directly determined by his essential traits. Even in our own time, the Hindu caste system claims to achieve a similar connection between worth and social status by claiming that our social status in the present life is determined by the way we lived in the previous life. But I do not think either of these counter-examples is particularly convincing. Plato's idea requires that an outside party makes a determination of an agent's essential traits and then places him accordingly in society, but this seems too difficult to achieve reliably in practice. The Hindu view would be a promising way to explain social status if only the metaphysical claims it

²¹ Darby, 408.

relied upon were true, but the mysteries regarding reincarnation are perhaps too great to be accepted.²² I conclude, then, that the gap between social status and our essential selves is too great to allow us to accept Darby's first suggestion.

Let us consider Darby's next suggestion, that our status as human beings gives us a good reason to respect ourselves. At first glance, it might seem that I am committed to endorsing this suggestion, because I have argued that each individual human life has essential value. But this would be misleading, because I have not endorsed the claim that human lives are special *because they are human*. Rather, I have endorsed Dworkin's suggestion that our wonder at certain processes involved in the lives of humans causes us to think of each individual as valuable. As we have seen, though, none of the processes Dworkin mentions are necessarily exclusive to human beings: they might apply also (though perhaps to a lesser degree) to some of the higher animals as well. Anyone who finds Darby's second suggestion promising must give us a reason to think that human beings are special *qua* human beings. I do not know of a successful attempt to do this. It seems that the argument is likely to turn on allegedly important features of humans, in which case we are back to the problem of the apparent arbitrariness of any features we choose.

Darby's third suggestion is that we might legitimately respect ourselves because we are persons. Here we encounter the problem of how personhood is defined. If we define it in terms of the possession of rights (which Feinberg suggests but I am not myself endorsing) then it will only confirm the primacy of rights considerations. If we define it in any other way then the reason of personhood has really turned into a reason about whatever it is we are defining personhood in terms of. This may reduce the reason of personhood to one of Darby's other reasons for respecting oneself, such as being a human being or acting for reasons. If it reduces to something else, then we need to know what that something is, and how it connects with personhood. So I conclude that Darby's suggestion that we would do well to respect ourselves because we are persons is unhelpful as it stands.

²² My concern to avoid extravagant philosophical commitments has its roots both in Occam's razor and also in arguments such as that of W.K. Clifford's in 'The Ethics of Belief.' See W.K. Clifford,

Darby also suggests that as good a reason as any to respect ourselves is that we can act for reasons. I must admit I do not actually disagree with this suggestion, but at the same time I do not think our agreement here is a problem for the establishment of a highly probable Weak NC1. At first glance this sounds like a contradiction, for Weak NC1 says that the best reason – the *single* best reason – to respect ourselves is that we are right-holders. But, as we shall see in Chapter 5, the resolution of this apparent contradiction lies in the fact that I consider rights to be a subclass of reasons. To be a right-holder *is* to be able to act for (certain kinds of) reasons. So my argument that our status as right-holders is the best reason to respect ourselves is not actually at odds with Darby's suggestion that we would do just as well to respect ourselves because we can act for reasons. In fact, the two claims can be seen to amount to much the same thing. This will obviously become more clear when we discuss exactly why it is that rights are best understood as a subclass of reasons.

Darby's final suggestion regarding legitimate reasons for self-respect concerns our ability to live in accordance with personal or moral standards of conduct. Interestingly, Darby here seems to be speaking of the very sort of moral principles to which we have referred approvingly as part of the moral backdrop for rights. What makes this suggestion less than satisfactory, though, is that he does not indicate that the content of these 'moral standards of conduct' is important. It seems that, for Darby, consistently following any set of principles is sufficient to legitimately respect oneself. While it is true that I have not said much about the nature and content of moral principles in this chapter, I have nonetheless implied that their content is of great importance. It is reasonable to assume, even at this early stage of our discussion, that some moral principles will be better than others. It could be argued that Hitler was true to a set of moral principles, but we would not want to say that he would have been justified in respecting himself as a result. So I think Darby's suggestion here is a necessary but not sufficient reason for respecting oneself. As for respecting oneself because one is true to a *good* set of moral principles, I will try to show in Chapter 5 that a

Lectures and Essays, Vol. 2 (London: MacMillan and Co., 1879), 177-211. This sort of concern arises again in the final alternative I consider, which also concerns religious belief.

proper understanding of moral principles and the possession of rights that follow from them are very closely connected. They are so closely connected, in fact, that respecting oneself because one follows a good set of moral principles is tantamount to respecting oneself because one is a right-holder. This will become more clear later.

In addition to Darby's suggestions we might consider an alternative that involves religious belief. It seems true that some people respect themselves because they are religious believers, and that this reason might carry an intuitive weight that, e.g., social status does not. This reason for self-respect might well seem just as good or better than any alternative to those who hold it. Nonetheless there is still an important respect in which it seems to be not as 'good' a reason as being a right-holder, namely that it requires us to believe in metaphysical doctrines from which there is inadequate justification. Religious beliefs require that a believer take a positive position on profound metaphysical mysteries, and the increasing secularisation of the world shows that many persons are unwilling to do this. Because the arguments concerning the importance of rights do not involve similar extravagances, they seem superior in that they will seem reasonable to a greater range of persons.

I conclude that all of the alternatives we have examined to Weak NC1 are either problematic, or not significantly different from Weak NC1. An examination of competitors to Weak NC1 has failed to move us away from endorsing it. At this point, then, I feel justified in claiming that Weak NC1 is highly probable, and that we therefore have sufficient reason to believe it to be true. As I have said previously, I think this is all we need in order to be justified in continuing to focus on rights in the following chapters. If rights are the best reason to respect oneself, and self-respect is an essential good, then rights are in some sense essential. Though the importance of rights has not, strictly speaking, been proved, it has been made highly probable. At the very least this is enough to place a high burden on those who would argue against the moral impoverishment thesis.

It is interesting to see briefly how far we can go at present toward establishing the other claims I listed at the beginning of the section. By establishing a highly probable Weak

NC1, it seems we have gone some way toward establishing Weak NC2, because, as we have said, self-respect is a necessary condition for respect from others. But there would still be work to be done, because self-respect seems unlikely to be a sufficient condition. It seems that we will respect others only when they both respect themselves and treat others with respect. I think Weak NC2 is as highly probable as Weak NC1, but its establishment would require a long digression that is not strictly necessary for our purposes given our establishment of Weak NC1. As for Strong NC1 and Strong NC2, I think these claims are probably too ambitious. They seem to be the versions that Feinberg himself wishes to defend, but Feinberg falls well short of succeeding in this task, and even in our more extensive discussion I think we would be better off focusing on the weaker versions of the normative claims, which are sufficiently challenging to establish in their own right.

At this point I would like to consider two objections that might be made against the argument I have advanced. Both objections address the worry that some may still have about whether, even after all we have said, rights are ultimately redundant in moral theory. The first objection is that if we truly have a persuasive account of essential goods, then rights might be unnecessary. If Dworkin's account of the sacred is as appealing as I claim, then it might be the case that everyone can be persuaded to accept its implications, and respect each other and themselves accordingly. Here it seems we would secure the essential goods I have argued for, yet have no need to protect these goods against each other in the way that rights do. But while there is nothing wrong with this objection in theory, I think it simply will not work in practice in our actual world. My response, in other words, brings us back to EC. It seems true that in a world of angels no one would need to have rights, because things would proceed just as this objection suggests they might. But in our world of flawed human beings rights are needed as distinctly effective protections of the goods I have discussed. The protections they offer can offset any natural tendencies we have toward insecurity, selfishness, short-sightedness, suspicion of others, and so forth. This is not to take an overly pessimistic view of human nature: human beings display many admirable tendencies as well. But in our moral theory we must take into account the full spectrum of human nature, and I

think that it is the objection under consideration which fails to do this. By painting an overly rosy view of human nature the objection encounters the danger of naiveté.

There is another way the problem of redundancy can be seen, and it will make up our second objection. We still may wonder why duties, goals, or some combination of the two cannot secure the essential goods we have talked about. If any of these options could be shown to be sufficient, then it looks as if rights would indeed be redundant. I will consider each in turn. Regarding duties, it is of course true that they play an important role in the framework I have suggested, for rights and duties are quite closely connected. I will have more to say about the nature of their connection in Chapter 5. This objection, though, contends that we would not lose anything by securing our essential goods through duties alone, and disregarding rights. But as I discussed previously, Feinberg counters this objection by pointing out the fact that rights give us control over the duties of others, and I have tried to supplement his argument by describing the way in which the exercise of this sort of control is important for the cultivation of self-respect. If these arguments are convincing, then it seems that duties alone will not secure the essential goods under consideration.

Would goals alone be any more successful at securing our essential goods? I think they would probably be even less so. To see this we can consider a utilitarian theory that excludes rights entirely: act-utilitarianism as it was envisioned by Bentham. According to this theory, we must always act in such a way as to achieve the greatest happiness for the greatest number. As Bentham clearly saw, the consistent observance of this principle leaves no room for rights. My 'right' to anything becomes meaningless whenever the Greatest Happiness Principle dictates that agents should act contrary to it, and this includes even something as apparently fundamental as a right to life I might be said to possess. Considerations such as this prompted Bentham to make his famous declaration that moral rights are 'nonsense,' and absolute moral rights 'nonsense upon stilts.'²³ Yet this simple act-utilitarianism might still

²³ Jeremy Bentham, 'A Critical Examination of the Declaration of Rights' in *Bentham's Political Thought*, ed. Bhikhu Parekh (London: Croom Helm, 1973), 269. Bentham would not himself endorse the view of happiness I suggest in the next sentence, but I do not mean for anything to turn on this. The point is that the version of utilitarianism under present consideration is a simple aggregative one and

claim to secure the goods we are seeking, because it can consider respect for others, self-respect, and respect for the value of individual lives as goods constitutive of happiness, and thus goods worth maximising and aggregating across individuals. It seems possible that a defender of such a position could claim that our essential goods are being recognised and promoted in this instance without any use of rights.

The heart of the difference between my own account and that of the act-utilitarian concerns the latter's emphasis on aggregating happiness across persons. It does not matter to our utilitarian how the happiness in question (or its constitutive elements, which we are still imagining to be identical to our 'essential goods') is distributed, so long as its total is maximised. There is a growing consensus in contemporary moral philosophy that this element of act-utilitarianism is unacceptable. It has often been stated that act-utilitarianism does not take seriously the distinction between individuals. On the account I have suggested this claim is supported by the essential, non-instrumental value of each individual human life originally advanced by Dworkin. Our recognition of others as essentially valuable beings who undergo and participate in wondrous processes implies that we should respect them as the centres of experience, or foci of subjectivity, which Feinberg claims they are. I think this is what the 'distinction between individuals' amounts to: each individual is a unique centre of experience, and deserves to be treated in a way that recognises her as such. If our utilitarian is unmoved by this argument, then he has two options. He can try to make a convincing case for why each individual life does not have the essential, non-instrumental value that I have argued it has, or he can argue that utility-without-rights can account for the relevant distinction between individuals. I suggest that either option would prove extremely difficult.

Our utilitarian may try to improve the situation by adding duties to his moral theory, while still excluding rights. This would allow him to say that we have duties to recognise that each individual life is valuable, to respect others, and to respect ourselves, because acting on these duties leads to the greatest happiness of the greatest number. But there would be two

does not involve any 'rules' other than the Greatest Happiness Principle. In this respect it is like Bentham's.

problems with trying to combine goals and duties in this way. First, such a theory would encounter a problem of coherence similar to that brought out by David Lyons in the context of combining rights and goals.²⁴ Briefly, the problem is this: there may be times when, in following such a moral theory, an agent would be better off (in the utilitarian sense of maximising happiness) violating a given duty, and there would be no adverse consequences of this one-time (or at least rare) violation. It seems that, in order to be a consistent utilitarian, our agent would have to violate the duty. But this fact threatens the strength of the duties we are trying to include in utilitarianism, which we originally envisioned to be exceptionless. With only a weak concept of duties we are in danger of encountering the problems mentioned above in the context of (duty-less) act-utilitarianism.

Even if a right-less combination of goals and duties could be shown to escape the worry about coherence, it would still fail to address the problem encountered by duties alone. As we saw, a morality of duties without rights fails to account for the important element of control that rights give us over the duties which correspond to them. The addition of goals to our morality of duties does nothing to address this concern. Certainly we cannot simply hope to substitute goals for rights in order to accomplish the task needed. So again, if the argument for the importance of having this element of control over duties has been effective, then it looks as if the importance of rights has been defended. I move in the next section to a discussion of universal moral rights.

1.4 Universal rights

We are now ready to turn our attention to the importance of universal moral rights. In terms of our overall argument we must now move from 'everyone has (at least some) rights' to 'everyone has (at least some of) the same rights.' The first claim alone would not be sufficient for the establishment of universal rights, because it allows for the possibility that

²⁴ David Lyons, 'Utility and Rights' in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 110-152.

everyone has different sets of rights, and that no single right is held by everyone. Now, if some rights are held by everyone, these rights will likely concern the goods we have described as essential. As we have seen, essential goods make unique contributions to our well-being, and this applies not just to some agents but to all. Thus if it is also true that rights are essential in morality, it seems that some rights will be shared by all agents, and that these will be rights concerning the acquisition and/or preservation of essential goods, or goods derivative of them. Although I have not attempted to give a full discussion of what essential goods there are, I have indicated a few, such as self-respect, respect from others, and individual lives. I will offer a more complete discussion of essential goods in Chapter 4, but whatever this account turns out to be, it seems there will be universal rights relating to those goods, both because essential goods apply to everyone, and because rights are essential in morality.

My discussion of rights and essential goods, however, might seem to present us with a danger of redundancy regarding the goods of self-respect and respect from others. That is, if agents already achieve self-respect and respect from others by having rights *generally* (as we saw in our defence of Feinberg), why must they further secure these goods by having specific rights *to* them? There are two points to note about this apparent redundancy. First, even if it is true, it does not invalidate our argument that there are universal rights which pertain to essential goods. As we have begun to see, there are other essential goods aside from the two forms of respect for which no danger of redundancy will arise. Furthermore, redundancies can be tolerated: it may be conceptually untidy to secure the two forms of respect twice, as it were, but the problem need not be seen as deeper than this.

Second, though, I am not certain the alleged redundancy exists, because specific rights to self-respect and respect from others often seem to do important work that is not done merely by securing the two forms of respect by means of having rights generally. The difference comes out clearly in a case in which I am tortured (which we shall assume for the moment is a violation of my right to respect from others). If I have a specific right to receive respect from others, and especially if this right is enshrined in law, I may gain some sort of

justice for the agony I have endured. This recompense would serve as a reminder and reaffirmation that respecting others is important. Consider now the other case, in which I have some rights, but not specifically the right to receive respect from others. In this case I will similarly have self-respect (by virtue of our argument in the first section), but I will not have a similar recourse against my tormentors who fail to respect me. I can point out that they should not have done what they did, and that they should have respected me because I am a right-holder, but I cannot demand specific redress in the way I could in the previous case. The only sorts of recourse I have are those entailed by the specific rights I possess. Put another way, particular rights are performative in a way that the possession of rights generally is not. Thus it seems that universal rights to self-respect and respect from others would do useful work that would not be done by the possession of rights generally, even though the possession of any rights helps to increase our self-respect and respect from others. So the problem of redundancy that we identified seems only to have been apparent, and I take the importance of universal moral rights to have been established.

Let us conclude the chapter by summarising where we have been and indicating where we are going. I have endorsed Feinberg's understanding of the nature of rights, and argued that his moral impoverishment thesis, in a revised form that I feel is consistent with his original version, is highly plausible. I have defended what I take to be an implication of Feinberg's account that respect from others and self-respect are essential goods, and in my justification of them I have, borrowing from Dworkin, argued for the existence of a third essential good, the value of each individual life. I have tried to strengthen the moral impoverishment thesis by emphasising the connection that right-holding enjoys with self-respect. Finally I extended the argument to universal moral rights and suggested that, in the case of universal rights to the two forms of respect, the establishment of their importance evades the apparent problem of their redundancy.

The following chapter will begin the project of justifying universal rights. It will do so by arguing that a credible account of universal rights requires that those rights are grounded in an objective meta-ethics. The argument is general and highly theoretical, and

moves us a step closer to the establishment of our own rights view. I will go on to argue that this view aligns me at least broadly with the natural law tradition, and I will consider my place within that context. The chapter aims to narrow the range of views that will count as plausible universal rights views, in order to lend greater authority to the view at which I arrive in later chapters.

Chapter 2

The Need For a New Natural Law Theory of Universal Rights

In the previous chapter I tried to defend the idea that rights, and especially universal rights, are essential in a proper understanding of moral theory. In this one I will begin an investigation of what sort of universal rights view is best. The present discussion is not a delineation of a particular rights view in all its detail, but an argument about the general strategy our view should employ and why. I will argue that, in order to be credible, an account of universal rights must be grounded in an objective meta-ethics. Particularly, universal rights must follow from objective values. I then go on to argue that this view places me at least broadly within the natural law tradition of rights justification, which gives us a natural rights view. I then critically examine other natural rights views with the dual purpose of explaining why I feel a new view is needed, and also directing our future discussion through the lessons that such an examination yields.

As such this chapter begins a second phase of the thesis, a phase that will carry on through the next chapter. In this phase I am interested in narrowing the scope of what will count as an acceptable, or plausible, or credible, account of universal rights. If we succeed in doing this, then the view I present in Chapters 4 and 5 will enjoy an authority it would otherwise have lacked. The point of Chapters 2 and 3 is not to offer an eliminative argument which shows *all* other views of universal rights to be unacceptable – such a project would be too ambitious, and I am not even sure it is possible. Rather, the point is to set up the view which emerges in the final two chapters as one which enjoys important advantages over many alternative views, and thus might be said to be defeasibly the best view available. If we

succeed in doing this, then our view will enjoy an authority greater than that of simply being one alternative among many, with nothing to choose between them.

2.1 Universal rights and objective values

I wish to defend the soundness of the following argument concerning universal rights and objective moral values:

- P1: Rights depend for their existence on conceptually prior moral values.
- P2: If certain rights exist universally, then the values on which they depend must also be universal.
- P3: If these universal rights are to be credible, the moral values on which they are based must be universal in a strong sense, i.e. objectively valid.
- C: A proper theory of universal rights must be grounded in a meta-ethics of moral objectivity.

The argument is general and schematic. It does not purport to establish that there are in fact universal rights, or that morality is in fact objective. The connection it hopes to establish between universal rights and objectivity is a conditional one: that if a credible account of universal rights exists, it must have an objective grounding. I will also refrain from discussing in detail how it is that rights might be derived from objective moral values. The issues I am leaving aside for now, concerning the exact nature of moral objectivity, the actual existence of universal rights, and the way in which these rights are derived from moral values, are all difficult issues, and indeed they will be the primary concerns of the chapters to come.

Since I will be emphasising the importance of moral values it is important to explain what I understand them to be. I shall be content in this chapter to understand values in quite a simple way as those concepts whose objects we designate as having worth. Thus if we consider the continuation of life to be a value that we hold, we are saying that the continuation of life has worth. If we consider the infliction of pain to be a disvalue, then we are claiming that it is something that has negative worth. In Chapter 4 I will begin to explain

how values are best understood in terms of *reasons*, but I think that in this discussion to talk of reasons would introduce peripheral issues that would only prove distracting. I will be concerned in this chapter with values that exist at the most fundamental level, which I have identified in the previous chapter as essential values. I will not discuss the content of these values further, but I will try to ascertain why they are needed to underpin universal rights. Thus I acknowledge the existence of derivative instrumental values, but I will not emphasise them in what follows.

I have indicated that later talk of values will be made in terms of reasons, but should be careful to specify that reasons-talk will not be intended to pre-empt values-talk. It will be, rather, a more specific way of understanding values. Similarly, we might wonder how moral values relate to moral principles. We saw in the previous chapter that Feinberg thinks that an important connection exists between rights and moral principles. This is that rights are valid claims, and that claims are valid just when their validity is determined by the moral principles with which we are working. Similarly, the Scanlonian position I endorse in Chapter 4 will also emphasise the importance of moral principles. I see my present discussion as being closely compatible with these concerns of Feinberg and Scanlon, because I envision a very close connection to hold between values and principles. I understand principles to be general normative statements whose content is informed by the values we recognise, and which guide us in making moral decisions. Principles are expressions of values, and it is impossible that we could have a valid principle that has no correspondence with a value that we recognise and endorse. So to say that universal rights must be based in objective moral values is also to say that they must be based in objective moral principles. Since values are the more fundamental of the two concepts, though, it seems appropriate that we concentrate primarily on values.²⁵

With this discussion as our background let us try to justify each of our premises, beginning with the first. As we have seen, this premise states that moral rights depend for

²⁵ My concentration on values over principles might also make the argument in this chapter more appealing to certain moral particularists who accept the existence of values but find the concept of

their existence on conceptually prior moral values. This statement is meant to apply not just to the moral rights we all share, but also to those moral rights possessed by some agents but not others (such as those created by particular promises and contracts). One way to argue in favour of P1 is to try to envision whether any plausible alternatives to it exist. Such a survey does not seem to yield very promising candidates. It is logically possible that rights could exist without reference to moral values, yet it is mysterious how they could plausibly be shown to do so. It seems unsatisfactory to simply declare that rights exist without any grounding at all, and if moral values are as fundamental as I have suggested, they seem to be the most obvious and promising way to ground rights. For example, we have a right to life because we value the continuation of life.

In order to strengthen our case for the first premise, however, let us briefly revisit some alternative methods of grounding rights. Dworkin has suggested that there are three broad kinds of moral theories: those that are duty-based, goal-based, and right-based.²⁶ Allowing this distinction to frame our discussion, I now wish to claim that any rights included in any of these kinds of moral theories must be justified in terms of moral values in order to be believable. Let us first take a look at duty-based theories. Here the term ‘duty-based’ sounds like a threat to our first premise, because it seems to imply that duties would be the ultimate basis for rights. This problem, though, turns out to be illusory, which can most easily be seen by turning to the example of Kant’s ethics.²⁷ There we see that persons are said to have rights because others have duties to treat them in certain ways. This is the sense, then, in which the theory is duty-based. But can these duties be the ultimate basis for our rights? It seems that in such a case the duties themselves would be arbitrary, and Kant himself certainly does not envision such a situation. Even Kant’s master duty, the categorical imperative, is a moral principle that is an expression of the value of universalisation. This value, via the principle, is what gives the duties, and by extension the rights which are derived from them,

principles to be unhelpful. Nothing that I go on to argue in this section *depends* on the claim that principles follow closely from values.

²⁶ Ronald Dworkin, *Taking Rights Seriously* (London: Duckworth, 1977).

their legitimacy. Thus it is true for Kant that rights (via duties) require for their existence a reference to a moral value. It seems that if the label 'duty-based' is the correct one to apply to Kant, it is so only in the rather weak sense that duties are conceptually more fundamental than rights and goals, not that they are the ultimate basis for rights, or indeed for morality generally.

It seems that the same point must hold for those who claim that our rights derive from duties to God. Some might think that we have a duty to God to love our neighbour, and that this duty not only gives God a right against us, but also gives our neighbour a sort of right by proxy. But even these duties to God cannot hang in the air unsupported. They too rely on conceptually prior moral values, such as the value we attach to obeying God's revealed teachings (on account of God's goodness, etc.). So again we see that a particular duty-based conception of rights is not plausible without a basis in moral values. Since the Kantian transcendental approach and the theistic approach are the two main strains of duty-based theories and neither have offered us a counter-example to P1, I think we can say of duty-based theories generally that they must rely on moral values.

A similar conclusion can be drawn about goal-based rights, for similar reasons. Rights 'based' on goals are actually based more fundamentally on values that underpin those goals. If I have a right not to be killed on a utilitarian account, this can only be because refraining from killing persons leads to the greatest happiness of the greatest number. Utilitarian rights require a reference to a moral principle, namely the greatest happiness principle, and ultimately to the value of happiness generally. It is a similar story for accounts that are consequentialist but not utilitarian, like the theory of the early Scanlon in 'Rights, Goals, and Fairness.'²⁸ In that piece Scanlon claims that rights are justified by reference to whether they contribute to the basic goods of fairness and equality. Thus his view appeals to the consequences of rights, yet is not utilitarian because he does not understand fairness and equality to (necessarily) contribute to happiness. For our purposes this account is

²⁷ There is a minority position among moral philosophers which claims that Kant's view is not duty-based but right-based. I endorse the position that he is duty-based, but to enter into this controversy

conceptually similar to the utilitarian account: rights are justified ultimately by reference to the values of fairness and equality.

With regard to right-based theories, an interesting challenge to P1 is presented by John Mackie, who claims that morality must be right-based.²⁹ He thinks that we cannot do without morality, that morality is either right-based, goal-based, or duty-based, that duty-based moralities are clearly unacceptable, and that goal-based moralities reduce to right-based ones. His style of argument, then, is eliminative: no other kind of morality will do, so we must invent one based on rights. He seems to believe that his eliminative argument allows him to forgo any further discussion of the grounding of rights. But Mackie's argument is less than fully successful. He dismisses duty-based approaches almost without argument, which seems too quick. His arguments against goal-based theories are predicated on a doubt about the flexibility of the greatest happiness principle to explain the diverse and progressive goals we have, but utilitarians may be able to counter this criticism. Worse, Mackie does not give us much of an idea of which rights are valid, and why they are valid. Thus he does not provide us with a fully-formed alternative picture to the one indicated by P1. It may be true that there is not a necessary conceptual connection between rights and our basic values, but Mackie does not give us any reason to prefer an alternative picture of how rights are grounded.

Other 'right-based' theorists have tried to ground rights in human dignity. They wish to claim both that rights are fundamental, and that persons possess rights on account of their inherent dignity. But in order to hold onto both of these claims, such theorists must understand the word 'fundamental' in a rather weak sense. Rights may well be more fundamental on this view than duties or goals, but they nonetheless rely crucially on the claim that persons possess dignity, and on the value of dignity. The 'right-based' view that relies on dignity is, in other words, not truly right-based. I am not now criticising it on substantive

would be to stray too far from our current concerns.

²⁸ T.M. Scanlon, 'Rights, Goals, and Fairness' reprinted in *Theories of Rights*, 137-152.

²⁹ John Mackie, 'Can There Be a Right-Based Moral Theory?' *ibid.*, 168-181.

grounds, but merely pointing out that it is conceptually unsuited to provide a counter-example to our first premise.

There is a sense, then, in which the view I am presenting concerning the priority of values need not be seen as a rival view to right-based, duty-based, and goal-based theories. We can understand these theories in a weak sense such that, e.g., a right-based view is one which holds that rights take priority over duties and goals, but which still bases rights ultimately on values. This reading requires that relatively weak necessary conditions hold in order for a view to qualify as right-based. On this weak reading, my argument does no harm to those who still wish to speak of their theories as right-based, goal-based, etc. However, there is a stronger reading whereby we understand these theories to indicate that the concepts in question are truly fundamental, e.g. that a right-based theory indicates that rights need not refer to any underlying concepts such as principles or values. I have tried to make the case that there are serious questions about whether this stronger view is tenable regarding the presence of rights in any of the three kinds of moral theories Dworkin identifies.

I take this analysis of duty-based, goal-based, and right-based views to provide a defence of the claim that rights depend for their existence on prior moral values. I hope the analysis is at least sufficiently convincing to place the burden of proof in the debate on those who would say that rights can exist without being based on values. Perhaps there is a theory that can ground rights adequately without reference to values which falls under the broad categories I have examined. Alternatively perhaps there is a successful exotic species of rights theory the likes of which I have not considered. But I cannot see what these would be, and until a counter-example to P1 can be found I will consider it to be justified.

Our second premise moves us from a discussion of moral rights generally to a discussion of universal moral rights. It states that if certain rights exist universally then the values on which they depend must also be universal. At first glance this proposition might have the ring of self-evidence, but the fact that moral rights (generally) require moral values does not entail that universal moral rights require universal moral values. For one thing, there is no reason we must expect a one-to-one relation to hold between rights and values.

We can envision a scenario in which different rights might follow from the same value. For example, if (as our discussion in Chapter 1 suggests) we should value the preservation of individual lives, it might follow that each individual has a right not to be murdered, but it might also follow that individuals have rights to basic necessities for survival such as food, water, and shelter. Now, it also seems true that a particular right might be derivable independently from two different moral values. Let us take as an example the alleged right to an education. We might be said to have this right because it follows from the value of personal autonomy, for it seems that being educated does indeed contribute to our sense of our own development as individuals. But alternatively, we might be said to have a right to an education because we value that society as a whole has members that are well-informed about the world.³⁰ This seems to be a reason of roughly equal plausibility to the one concerning autonomy. Of course, it is certainly possible that the best explanation of a right to an education might include both of these values, but the important point for our current discussion is that it does not seem necessary that this is so. A right to an education might be explained adequately by either value independent of the other.

While it is true that we cannot expect a one-to-one relation to hold between rights and values, it is also true that such a relation is not needed in order for P2 to be true. The first kind of deviation from a one-to-one relation that we identified, namely that more than one right might follow from a given value, is not a threat to P2. This is easy enough to see by returning to our example above. Let us say it is the case that the value of individual lives yields several rights, such as the right not to be murdered, the right to acquire food, the right to acquire shelter, etc. Furthermore let us say for the moment that these rights can be derived only from this principle. If these conditions hold, then the following statement must be true: if the rights in question are held universally, then the moral principle must also be held universally. It would be false to say, for example, that everyone could have the right to

³⁰ It seems that in such a case we would have not only a right to an education but a duty to be educated, but the addition of a duty here does not affect the argument.

adequate nourishment without the existence of the moral principle that each individual life is valuable.

The story is different, however, for the second kind of deviation we mentioned. We saw that it appeared to be the case that, for at least some rights, a single right could plausibly be derived independently from two different values. It is important to see that this sort of deviation is a threat to P2 in a way that the first kind was not. If a particular right can be derived independently from more than one moral value, then it is possible that that right might be held universally while the relevant values will not be. For example, it could be the case that everyone is understood to have a right to an education, but not everyone recognises the value of individual autonomy. This is because some base their recognition of the right to an education only on a recognition of the value that the good of society should be promoted (assuming of course that education does in fact promote the general good). The real danger for P2 is that all of our rights could turn out to exhibit the feature of being derivable independently from different values. If so, it could then be the case that we hold rights universally without holding *any* values universally. Another example of a right that can be derived from two different values might be found in the context of an alleged right not to be tortured. Some might think that such a right is based on a value which concerns the victim of torture, while some (e.g. Kant) might think the right derives from a value concerning the rationality and dignity of the torturer.

Let us stay with the example of torture in our defence of P2. It is true that there seem to be at least two different values from which a right not to be tortured could be derived. One concerns the disvalue of the effects of torture on the victim, while another concerns the disvalue of the activity of torture as it pertains to the torturer. But we will recall that I was careful to specify earlier in the section that the values I am concerned with in my argument are values that exist on the most fundamental level. Is there a value (or disvalue) more fundamental than the two considered here, from which these two might be said to be derived? I think there might be, and it could take the form of the disvalue of causing others to suffer. It seems that any right not to be tortured would have to make reference to this more

ultimate value. The fact that a right not to be tortured can be derived from different derivative values, then, does not harm P2. This defence has plausibility so long as it is plausible that the disvalue of torture to both the victim and the perpetrator follows from the general disvalue of inflicting suffering on others. The hope is that, for all of our universal rights, the right can be derived from one value only, even if it may be true that some values yield more than one right. We will have to make do with a certain amount of hope at this stage, because a complete defence of P2 requires that we address every relevant example, and there are examples of fundamental values which I will not address until Chapter 4. But I hope I have provided a model for how it can be that examples that seem to fit uneasily with P2 can be reconciled with it.

We have noted that P2 can be true without a one-to-one relation holding between universal rights and universal values. It is possible that more than one right might be derived from one basic value. Additionally, nothing we have said precludes the possibility that there may be basic moral values that exist yet do not yield rights. What seems not to be the case, however, is that more than one basic moral value yields the same right. It seems sometimes to be the case that more than one derivative value yields the same right, but the hope is that, in each case in which this is so, the values in question themselves derive from a common basic value.

Our third premise states that in order for universal rights to be credible, the moral values on which they are based must be universal in a strong sense, i.e. objectively valid. Immediately we notice that there are terms in this premise that need to be explained. We need to know why credibility is an important standard to apply to universal rights, and what it consists in. We need to know what is meant by moral objectivity, and why I have identified it as a kind of strong universality. Let us first consider the standard of credibility. Broadly, moral judgements, rights, principles, etc. are credible if we have good reasons to believe in them. It is clear that a standard like this is needed if our rights (and other concepts) are not to appear arbitrary. It is a higher standard than mere possibility, intelligibility or coherence, for it requires not only that the concept in question is possible and makes sense but that a strong

case can be made for its actual existence. In short, it indicates that the concept in question is justified, all things considered. It is important to see the implications of this discussion for universal rights. If universal rights are to be credible, then it should be possible, at least in principle, that everyone can regard them as justified. This is the case because universal rights by their nature apply to everyone; thus their credibility must range similarly over all agents. It need not be the case that everyone in fact thinks universal rights are valid, but it must be the case that everyone is, at least in principle, able to recognise their validity.

This leads us into a discussion of the term 'objective.' By objective moral values I mean those values which are in some sense valid independent of the beliefs and desires of agents. An objective moral value would have its status even if everyone in the world disbelieved it, or no one had even considered it. I will refer to these values as being universal in a strong sense, because their universal correctness has binding force. Objective values can be contrasted with subjective ones, which are values that do depend for their existence on the beliefs and/or desires of agents. The categories of objective and subjective do not exhaust the possibilities for moral values, however, for such values could also be intersubjective. Intersubjectivity might be thought of as a status between those of objectivity and subjectivity, one which is characterised by a state of affairs of everyone adhering to certain values even though there is no binding reason they must. Intersubjective agreement can range over agents as expansively as objective agreement, but has a contingent nature that allies it with subjectivity. This contingent nature is what leads me to refer to intersubjective values that are shared by everyone as being universal in a weak sense.

Having clarified our terms, we are now in a position to see how our defence of P3 must proceed. We must show both that universal rights are credible in a meta-ethics of moral objectivity, and also that they fail to reach a threshold of credibility in a meta-ethics of subjectivity or intersubjectivity. The first task is perhaps the easier one. If moral values are objective and universal rights are somehow derived from them, it follows straightforwardly that these rights would be credible. This is both because we are justified in favouring their existence over their non-existence, and because their justified status would be binding on

everyone. We would be justified in favouring the existence of universal rights precisely because we are justified in favouring the existence of the moral values in question, and because we are justified in favouring the validity of the derivation of the universal rights in question from those values. Furthermore, the fact that these rights derive from objective values implies that they share the authority of those values: just as it is in principle demonstrable that everyone is justified in believing in the existence of objective values, so it is in principle demonstrable that everyone is justified in recognising and respecting the universal rights that follow from them. Even if someone denies the validity of these universal rights through some sort of error, it is in principle possible to demonstrate to her that she is wrong. Thus a contingent fact of disagreement about universal rights need not be a threat to their credibility.

It is similarly not very difficult to show that universal rights will not be credible in a meta-ethics of mere subjectivity. By 'mere subjectivity' I mean a subjective meta-ethics that features no widespread agreement about values or principles. It is clear that any attempt to institute universal rights in such a system would not only lack credibility, but would in fact be wholly impracticable. Without a general agreement about values it is mysterious how there could be widespread agreement about the importance or the content of rights. This fact of disagreement would be sufficient to defeat the notion of universal rights, because unlike what we saw was the case in an objective meta-ethics, there would be no explanation we could appeal to (even in principle) under mere subjectivity to settle the disagreement.

A somewhat more difficult claim to demonstrate is that universal rights will lack credibility in an intersubjective meta-ethics. It seems we can, after all, imagine a scenario in which the contrary is intuitively plausible. We can imagine it might be true that all agents respect (at least some of) the same moral values – even though nothing about the nature of those values says they must – and that they furthermore think that rights are valuable moral concepts. Moral agents might then agree both on the existence of universal rights, and on the content of those rights. These universal rights would also seem, at first glance, to pass our test of credibility. In this world of harmonious intersubjectivity everyone would agree that we are

justified to agree about the validity of universal rights. Because agents agree about values and principles, it is likely they will agree about the moral concepts which follow from those values. Thus they can agree that everyone possesses certain rights, and they each be relied upon always to respect those rights.

My response to this counter-argument to P3 is that although the state of affairs it depicts is theoretically possible, it will never come about in the actual world. In making this argument I am relying on some of the same empirical claims I made in defence of EC in 1.3. It seems evident that human beings are creatures who possess many diverse aims, and the aims of some individuals will inevitably conflict with those of others. If this is the case, then it seems highly unlikely that *everyone* will reach intersubjective agreement about anything, even if the subject of the agreement is very basic, intuitively appealing rights, such as the right not to be tortured. Even if it is the case that a great many people agree that everyone has a right not to be tortured or murdered, it seems likely there will always be dissenters in the world, whether out of complex philosophical disagreement, malice, or sheer perversity. We have all experienced how difficult it is to get a large group to agree on anything; we can extrapolate from this experience to see how difficult it would be to have everyone in the world reach a consensus.

At this point, though, a defender of the objection I have described to P3 might complain that we are asking too much of intersubjectivity. She might say that by insisting on truly universal agreement we have placed the burden of the intersubjective argument too high, and are being unrealistic. What is wrong, such a person might ask, with an intersubjective agreement about universal rights that is widespread, though not universal? Surely this scenario is not unrealistic, and it seems that these rights could be upheld by the majority against any dissenters. Here we would seem to have an example of intersubjective universal rights that could be put into practice and operate quite well in the world.

My response to this argument is that, although it presents a scenario in which universal rights are, in a sense, practicable, it does not present them as credible. To see this we must remind ourselves about what is entailed by credibility, and particularly by the

credibility of a moral concept that claims to be universal. In order for a concept to be credible it must be true that we are justified in accepting it. The scope of beings to whom the word 'we' applies in this formulation depends on the scope of beings to whom the moral concept in question applies; for a concept such as universal rights that purports to apply to everyone, the word 'we' will similarly apply to everyone.³¹ That is, everyone must in principle be able to accept that universal rights are justified, all things considered. We have seen that in an objective meta-ethics this is not a problem, because the objectivity of moral values implies that we are either correct or incorrect to believe in the existence of universal rights, and that the matter is discoverable by us. But this is the point at which objectivity and intersubjectivity crucially come apart. Even in the face of widespread agreement about universal rights, it is mysterious what could be said in an intersubjective meta-ethics to change the minds of the minority of rights sceptics. Coercion is presumably out of the question, because we would imagine that this is just the sort of behaviour that defenders of universal rights are interested in preventing. Our rights dissenters could be reasoned with, persuaded, cajoled, but in the end they would still be under no obligation to accept the validity of universal rights. Such rights are derived from particular moral values, and our rights dissenters are under no obligation to accept those moral values. Those values are not in any sense correct, after all, but only widely shared.

To say that rights dissenters are under no obligation to accept universal rights in an intersubjective meta-ethics is not necessarily to say that there is *no reason at all* that the majority support universal rights. The majority may well have many reasons for supporting universal rights: they might think that universal rights contribute to the overall happiness of the world, or that they promote equality, or that they protect individual autonomy, or a combination thereof. Intersubjective rights-defenders may passionately believe in these values and the principles connected with them, and be able to sing their praises articulately and at length. In doing so they might win over any rights-dissenters who happen to share

³¹ We should keep in mind that I have not specified exactly who everyone is (e.g. persons, humans, animals, etc.). But this does not affect the present argument.

their values, but may have inadequately appreciated some of the moral facts present (such as the relation of rights to those values and principles). The problem, though, is that rights-dissenters may not share the values of the rights-defenders, and if this is the case, then there will be nothing rights-defenders can do. The arguments of rights-defenders would have to presuppose the correctness of certain values and principles, and this is exactly what they cannot do on an intersubjectivist morality.

I conclude with regard to P3 that any values that underlie universal moral rights must be universal in a strong sense. They must be objective values, values that are in some sense correct for everyone, and whose correctness is in principle discoverable by anyone. Though it is theoretically possible to have a credible concept of universal moral rights that are underpinned by weak (intersubjective) moral values, this cannot happen in the actual world because of certain empirical facts about humans. Persistent rights-critics are bound to exist, and intersubjectivist rights-defenders will have nothing effective to say to them.

More broadly, I consider each of our premises to have been defended satisfactorily at this stage. I conclude, then, that a proper theory of universal moral rights must be grounded in a meta-ethics of moral objectivity. On a credible account of universal moral rights, the rights must themselves be objective in the sense that they are both possessed by, and held by others against, those who mistakenly deny their existence. Rights can have this very strong status only if it is conferred on them by values that have the same sort of status. Now, there is some good news and bad news that follows from our conclusion. The good news is that our present inquiry has clearly pointed the way forward for our future discussion. We know that an exploration of objectivity is needed, and we know that we will also need to explain how it is that rights follow from objective values. The bad news is that it seems that a credible account of universal rights must take on all the additional problems associated with moral objectivity. Many rights theorists would think they have enough worries without additionally importing those of moral objectivity, but if the argument I have presented is correct, we have no choice but to try.

2.2 Natural rights theories

I believe the argument presented in the previous section places my thought at least broadly in the natural law tradition of rights justification. Theories of this sort are commonly referred to as natural rights theories. If the theory I have presented is a kind of natural rights theory then it is worthwhile to discuss how it fits into that tradition. I will do this with an awareness of the fact that the position I have argued for above is still a bare sketch, and will have to be filled out in subsequent chapters. Nonetheless I think that even my embryonic position can be usefully compared to other natural rights accounts, and that such a comparison is useful as a way of helping to direct our inquiry in chapters to come.

Since natural rights theories depend crucially on claims about natural law, our first project is to determine what counts as a natural law position, and this proves to be surprisingly difficult. Clearly the natural law is meant to be some kind of objective basis for morality, though in twisting its way through almost the entire history of Western philosophy it has undergone several permutations, performing various functions for theorists with varied aims. The natural law tradition may reach back as far as Plato, insofar as he believed that human behaviour is subject to an unchanging normative order that is part of the natural world. Natural law may be more commonly identified with Aristotle, who believed that the inner principle of change in beings – which for humans is reason – naturally led them to do certain things, and that goodness can be ascribed to those actions. Conversely, then, whatever we do contrary to our inner principle of change is morally bad. The Stoics thought that reason in humans is part of the logos, the force which governs the universe. So although they had different metaphysical views from Aristotle, they agreed with him that the natural law for humans is governed by reason. Aquinas followed Aristotle closely on natural law, as on many other philosophical matters, though for him the legitimacy of natural law depends at least partly on the teachings God has revealed to us. An important shift occurs in the early modern period with the thought of Grotius. Though he was himself a theist, Grotius thought that natural law was valid and comprehensible without God. Just as radically, he was the

first to see natural law as itself a theory of human rights. Grotius is in some ways the key figure for us in the history of natural law, and I will examine him in more depth shortly. I will also discuss Locke, who followed Grotius in many important respects. After Locke natural law lay mostly dormant for the next several centuries, though in recent times it has been revived by several figures including John Finnis, who grounds natural law in basic goods whose goodness is self-evident. Though Finnis is perhaps the best-known of recent natural law theorists, I will not examine his thought in detail because he is not much concerned with deriving rights from natural law.³²

This survey of natural rights theories, cursory though it may be, helps us to understand what is meant by natural law. As I have mentioned, for all theorists natural law is a kind of objective basis for morality. A more specific characteristic of natural law that emerges from this survey is that it is often understood to be in some respect a part of nature, and discoverable by the natural faculties of humans. It is debatable whether a theory must have both elements (objectivity and naturalism) in order to qualify as a natural law theory; some feel comfortable calling any objectivist meta-ethics a sort of natural law. My view is a natural law view in the weaker sense of the two: it employs an objective meta-ethics, but the kind of objectivity I endorse is not naturalistic. We might say that the sense in which my view can be labelled natural law emphasises the word 'law' over the word 'natural.' Though some might for this reason deny that my view qualifies as a natural law view, this is not a very fruitful controversy in which to become enmeshed. The most important point is that my view has similarities to certain natural law views, and can benefit from an examination of them.

Many natural law theorists through history have not been particularly interested in natural rights. They have instead connected natural law, at least implicitly, with duties and/or goals instead of rights. However, if our argument in Chapter 1 is correct and rights (particularly universal rights) are essential to a proper understanding of morality, then the possibility of connecting natural law and universal rights should be explored fully. I would

³² My very brief discussion of the history of natural law is essentially a summary of a slightly less brief one offered by Stephen Buckle. See his 'Natural Law' in *A Companion to Ethics*, ed. Peter Singer

like to begin this exploration by addressing what is perhaps the best-known recent criticism of natural rights, that levelled by L.W. Sumner.³³ Sumner's argument against natural rights is complex, and a complete presentation of it would take us on a long diversion, but it is important to emphasise where the differences between us lie and how they might be resolved in favour of the view I have presented. Sumner thinks that a natural rights theory must treat only rights as morally basic, yet he also recognises the need for moral principles, so he claims that for the natural rights theorist there must exist 'rights principles' that are more fundamental than other principles. For example, the principle that all human beings have a right to life would be a rights principle. He thinks that natural rights, if they existed, would have to be derived from such fundamental rights principles, and that any attempt to say that these principles are fundamental is highly problematic.

The most important difference between my view and Sumner's is that I think rights can be derived from values and principles that are not, in Sumner's terms, specifically rights principles. As we have seen in my discussion of P2, I hold that rights can be derived ultimately from very general moral values, values that can be understood in terms of principles whose fundamental status Sumner would find unobjectionable. Thus I think that a right to life can be derived ultimately from the value we attach to each life, and correspondingly from any principle that expresses this value. Such a principle would not be a 'rights principle' (according to Sumner), because its content makes no reference to rights.³⁴ Thus in order to overcome Sumner's criticism I will need to show exactly how it is that rights can be derived from values and principles in the way I have suggested. The details of this derivation will be our project in Chapter 5, so we must delay a full response until then, but I think it is useful nonetheless to acknowledge Sumner's argument in this context and to identify what sort of response will be needed.

(Oxford: Blackwell, 1991), 161-174.

³³ 'Natural Rights' in *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987), 92-128. This piece is an elaboration of his earlier 'Rights Denaturalized' in Frey, 20-40.

³⁴ Rights theorists whose sympathies lie with right-based moralities might contend that such a principle makes at least an *implicit* reference to rights. But if P1 in the previous section is correct then this need not be the case.

At this point I would like to analyse a few important attempts that have already been made to derive rights from natural law. The point of this analysis, and the criticisms it contains, will be twofold: my criticisms will suggest why my own theory will diverge in important respects from the ones discussed, and they will also point out some of the most important problems that will need to be addressed in future chapters if we are to have an optimum natural rights theory. With this in mind I will discuss the natural rights theories of two older thinkers, Grotius and Locke, and a contemporary theorist, Anthony Lisska. The two questions for which we wish to find answers from these thinkers are 1.) what is their concept of natural law?; and 2.) how are rights derived from natural law?

Grotius's views on natural law and natural rights develop over the course of several works, and there are some respects in which he clearly changes his mind from one work to another, making it difficult to identify a single Grotian theory.³⁵ His early view of natural law, found in *De Iure Praedae* ('Commentary on the Law of Prize and Booty'), is that it is an expression of God's will, which is in turn explained in terms of man's innate sociability. At this stage he believes it to be conceptually possible to divorce discussion of natural law from that of natural rights; natural rights are not, strictly speaking, a part of natural law. Nonetheless natural rights do follow from the natural law, so it is true to say that individuals have rights in a state of nature. This is because nature is patterned in a particular way which implies the validity of certain human practices. Grotius suggests that natural goods are apportioned like seats in a theatre, such that they must be claimed by physical occupancy, but once claimed can be regarded as private property. Our basic right to use the material world extends naturally to the development of private property, and it does so through the labour that we exert on various natural goods. Thus there is a natural right to private property, and there is a further right to protect our property against threats.³⁶ Grotius also thinks there is a natural right to punishment, though his argument for this is perhaps less convincing. He

³⁵ Hugo Grotius, *De Iure Praedae Commentarius* (Oxford: Clarendon Press, 1950); *The Jurisprudence of Holland* (Oxford: Clarendon Press, 1926); *De Iure Belli* (Oxford: Clarendon Press, 1925). My discussion of Grotius is influenced by that of Richard Tuck in *Natural Rights Theories* (Cambridge: Cambridge University Press, 1979), 58-81.

argues that because the state has a right to punish, and because any rights the state possesses must be held in virtue of their transference from the state's members, then there is a natural right to punishment possessed by each individual. This argument, however, simply presupposes that the state has a right to punish, and is thus unconvincing. Nonetheless, the picture Grotius presents of deriving rights from natural law was original, and is still regarded by many to have considerable merit.

Before analysing Grotius's thought it is best to see how it changed in important respects as his career unfolded. In his *Introduction to the Jurisprudence of Holland* he retained the idea that natural law was intimately connected with the social nature of humans: the things that are intrinsically good are those that are associated with our sociability. The important shift in this work, though, is that instead of seeing rights as derived from natural law, he now sees them as part of the natural law. The natural law *is* the list of universal natural rights plus the general injunction to respect the rights of others. Grotius thus shifts in this work to a more right-based approach. He sees rights as a conceptual necessity in the realm of justice, e.g. in order for there to be a category of distributive justice there must be 'distributive rights', or rights of desert. He claims that we have two kinds of rights, those that concern property and those that concern merit. Though he is not entirely clear on this point, Grotius apparently thinks that the content of our natural rights is governed by the fact that human sociability is of paramount importance. That is, because concerns about property and merit are closely connected with concerns about our sociability, they enjoy the protection that rights provide.

Grotius's most famous work is his later *De Iure Belli* ('On the Right of War'),³⁷ which presents some new thoughts on the nature of natural law. Grotius now sees the natural law as the obligation humans are under to preserve social peace. Although this is a change from his previous claims about natural law, one can see how it follows from Grotius's continuing concern with the importance of sociability. Rights are conceptually necessary for the

³⁶ All natural rights mentioned in our discussions of Grotius, Locke, and Lisska should be understood as featuring a universal scope, unless otherwise indicated.

preservation of peace, and are thus again a part of natural law. A more important break with Grotius's previous writings is found in his claim that the natural law is a logical necessity that does not depend on God. Indeed, not only does God not create the natural law, but he could not change it if he wanted to. God cannot act contrary to what is logically necessary: just as he cannot make $2+2=5$, so he cannot make good what is intrinsically evil. The importance of this shift for the history of natural law thinking cannot be overemphasised. From Aquinas to Grotius God was always the source of natural law, and it seems likely that most theorists did not even entertain the possibility that there could be a natural law that exists independent of God. At the same time, this is not to suggest that all natural law theorists from Grotius onward were atheists; on the contrary, Grotius was himself a theist, and we shall see that Locke was a theist as well. But given the metaphysical uncertainties of God's existence combined with the increasing secularisation of centuries that followed Grotius, the separation of natural law from theism was an important step for natural law's continued plausibility.

Now that we have surveyed the evolution of Grotius's thought we are in a position to analyse his key ideas. I will first point out what I regard as its promising elements, and then its problems, both with an eye toward directing our own inquiry. Perhaps most importantly for our purposes, the early Grotius can be understood as offering an account of the derivation of universal rights from moral values. I am referring here to his treatment in *De Iure Praedae* of the rights of property and punishment. Though he is not explicit in saying that these rights derive from fundamental moral values, it is difficult to see how his understanding of the matter could be otherwise. Particularly with regard to his treatment of the right to property, he seems to envision this right as being derived from the value of human sociability, and perhaps more fundamentally from a value concerning God's will. Admittedly, the derivation is not as clear in the case of the right to punishment, because his discussion of this right is less satisfactory. But a case could surely be made that this right derives from the same values as

³⁷ It may seem odd that 'iure' is translated to 'law' in the title of Grotius's earlier work but to 'right' here. This reflects the subtleties and ambiguities of 'iure,' which are brought out well throughout Tuck.

the right to property. So although the early Grotian account is far from unproblematic, it is one that fits into the strategy I have suggested in the first section.

Another promising element, as I have already indicated, is Grotius's important separation of natural law from theism, which takes place explicitly in *De Iure Belli*. To be sure, the concept of God is doing some work even in this piece: it is God who purposively makes humans sociable, which is what makes it conceptually impossible that there be a rational being to whom the natural law fails to apply. But throughout Grotius's writings it is easy to imagine 'God's' work being taken over by other concepts. In the early Grotius it is God's will that gives us the natural law, but this will is expressed in terms of human sociability, which alternatively could receive a non-theistic grounding. The same point can be made about Grotius's later claim (above) that humans are sociable because God makes them so.

The problems Grotius faces are instructive for us. First, although he does attempt to ground natural law in different ways throughout his writings (e.g. God's will, man's sociability, nature's pattern, logical necessity), none of these groundings seem satisfactory as they stand. We have already noted the problems with relying on a concept of God, so I will leave aside the consideration of God's will. As for man's sociability, or any alleged pattern to nature, we need to know why either of these claims are true, and why they are of paramount importance, if they do not rely on God's will. Here Grotius's account is incomplete, though not necessarily mistaken: many have thought that the claim that humans are naturally sociable and the claim that nature exhibits a pattern discoverable to humans enjoy some intuitive plausibility. The burden is on a natural rights theorist like Grotius, however, to provide as complete an account as possible of the way in which morality is objective. If objectivity appeals to human sociability, this might for example be because there is something natural about sociability, and because there is a connection between what is natural and what is good. But neither of these claims are easy to establish. Similarly, if objectivity appeals to a pattern in nature, we must first establish that the pattern exists, and then establish that it somehow tells us what is good. The most prominent problem that arises for these suggestions about grounding objectivity, then, is the classic Humean one of how we can derive 'ought'

from 'is.' It is difficult to see how there could be a natural law theory which avoids the need to provide a solution to this problem. But this is not to say that the problem is insoluble, and I will suggest in Chapter 4 that Dworkin's account of the sacred appears to contain the necessary resources to overcome it.

I think the later Grotian claim that natural law is a logical necessity, though, is probably too ambitious. This view is similar in many ways to Kant's meta-ethics, but though Kant's account is not unproblematic, he at least provides us with an explanation of considerable complexity for why it is that every rational being is bound to respect the categorical imperative.³⁸ If anyone is to succeed in the later Grotian project of seeing natural law as a logical necessity, a similarly complex (and more successful) explanation for how this is so must be provided. It is far from intuitively clear, for example, that even if there is a natural law for humans, it would apply with equal strictness to Martians³⁹, as would be the case if it is a logical necessity. I will myself suggest a weaker version of natural law in Chapter 4.

Finally, given my previous discussion of right-based moralities it will perhaps come as no surprise that I think Grotius's move in his later work to a more right-based approach is not an improvement on his earlier approach. I have some sympathy for Grotius's claims that rights are preconditions for justice (*Jurisprudence*) and social peace (*De Iure Belli*), though this point might be better stated in a weaker form (i.e. 'rights are the *best* way to achieve these goods'). As I have already argued in Chapter 1, I think rights enjoy a privileged connection with respect from others, self-respect, and the value of each individual life, and it is quite plausible to say that these goods will be needed if we are to enjoy the full flourishing of justice and peace. But I do not think Grotius improves matters by suggesting in these works that rights are a *part* of the natural law, implying that they are as conceptually basic as values or principles. If my argument for P1 is correct, then even in these works Grotius is committed to saying that rights are derived from values, such as those concerning justice and peace. If

³⁸ Immanuel Kant, *The Moral Law: Groundwork For the Metaphysic of Morals*, ed. H.J. Paton (New York: Routledge, 1948).

rights are appealed to as important because they are preconditions of certain goods, I cannot see how they could be considered to be as conceptually fundamental as those goods.

We learn several lessons about a successful natural rights account, then, from an examination of Grotius. One of the most important of these is that natural law can and should be divorced from theistic considerations. Another important lesson is that we will have to be as specific as possible about how the natural law (or moral objectivity) is grounded, so as to avoid the incompleteness found in the Grotian account. It seems that one problem we will have to overcome in order to do this is to explain how the Humean is/ought hurdle can be cleared. It also seems likely that, whatever our concept of natural law, it will have to be weaker than the concept involving logical necessity advanced by the later Grotius. These lessons will influence my discussion in the chapters to come.

The second natural rights thinker I would like to discuss is Locke.⁴⁰ As we shall see, many of Locke's ideas about natural rights, including some for which he is famous, are actually derivative of Grotius. Nonetheless Locke does advance important new ideas about natural law and natural rights which will help to direct our own inquiry. His explanation of natural law is unfortunately less extensive, and perhaps less consistent, than that of Grotius. Locke says both that natural law *is* reason, and also that it can be *known* by reason. Now, it is a bit unclear how both claims could be true, but we can perhaps interpret this cursory discussion charitably and draw a few conclusions from it.⁴¹ Whatever else Locke may have in mind, he clearly thinks that reason is closely connected with natural law, and that natural law is discoverable to humans through their natural faculties. Similar to Grotius, he also imagines God to play a role as the giver of natural law – but it is easy to imagine Lockean natural law as existing independent of God. For even if reason does not come from God, it still might be

³⁹ Assuming, of course, that Martians exist and are significantly different from humans.

⁴⁰ John Locke, 'Second Treatise' in *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1960), 265-428. My discussion of Locke is influenced by that of A. John Simmons in *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), 68-120.

⁴¹ Locke is aware that some may find his discussion of natural law too cursory: 'it would be beside my present purpose, to enter here into the particulars of the Law of Nature....' 'Second Treatise,' 275. It is a bit difficult to see, though, how he could think that the details of such a basic part of his political thought were anterior to his purposes.

said to have an authoritative status that justifies the fact that its dictates enjoy normative force.

Locke's original contributions are found more in what he claims the natural law tells us, for example that our natural state is one of perfect freedom and equality. It is easy enough to see why he might think that we are perfectly free in a state of nature, though perhaps less clear why he claims we are perfectly equal. His claim about equality depends on the claim that it is obvious that creatures who are biologically similar (e.g. members of the same species) should be considered equal in a moral sense. This has not been so obvious to many other philosophers, though I have tried to offer my own defence of equal human worth in Chapter 1. Crucially, Locke claims that the natural law also tells us that we have a duty to preserve our own lives. His explanation for this does depend on God: we are God's creatures put on the earth for his purposes, so only God can end our lives. He then combines this with his claim about equality of persons to reach the conclusion that we all have duties to preserve each other's lives.

It is Locke's belief that a great proliferation of universal rights follows from his understanding of natural law. He thinks we enjoy rights to life, health, liberty, private property, punishment (if others have transgressed the natural law), and reparation (if our own rights have been violated). The justifications he offers for these rights hold some promise. He thinks there is a right to health for the same reason (above) that there is a right to life. Our right to liberty follows from the fact that we are free in a state of nature. Our right to private property is essentially an elaboration of the Grotian account: we have property in our own person and transfer that 'natural' property to individual objects through our labour. His account of our right to punishment, though, is an improvement on the Grotian explanation. He says that since natural law is worthy of obedience, each transgression of it should be punished to a high enough degree that its future violation is hindered. In addition to this reason of restraining further violations, we can punish for reasons of reparation, so long as our reparation is proportionate to the original transgression. This is superior to the Grotian

account, which, as we have seen, relies crucially on an assumption that states have a right to punish their citizens.

The promise of Locke's account lies more in the intuitive plausibility of some of its claims than in the arguments Locke offers in support of those claims. Many have found his claim that human beings enjoy rights to goods such as life, health, and liberty (as well as the Grotian rights of property and punishment) to be intuitively persuasive. I myself endorse these rights in Chapter 5, but in so doing I try to give a fuller justification (found in Chapter 4) of why the goods in question are essential. Locke's discussion of the right to punishment is more successful: it seems that if there really is a valid natural law, then fairness considerations would indicate that we would be allowed to punish its transgressors for reasons of reparation and restraint. We will see the influence of Locke's theory of punishment in my own account of a right to a fair trial.

I have already mentioned some of the problems the Lockean account faces. Since I have noted that his treatment of both natural law and equality of persons seems too cursory, I will not dwell further on these points. A problem that is at least as important, though, is that it is unclear how Locke's rights are grounded. Some have understood his account to be a right-based one. Alternatively it might be understood to fit the model I have suggested in the first section by claiming that universal rights are derived from values concerning liberty and equality. Either way, though, his account requires further explanation. If Locke is presenting a right-based morality, he must say more about why morality is right-based. He might opt for the sort of argument that Mackie makes when Mackie claims that morality simply cannot be duty-based or goal-based, so it must be right-based.⁴² Alternatively he might adopt the (later) Grotian strategy of claiming that rights are preconditions of the enjoyment of certain goods (in this case liberty and equality). Regarding Mackie's strategy, few endorse the idea that all duty-based and goal-based theories reduce to right-based ones. Even if they did reduce in this way, I will later work with another kind of moral theory, a reason-based one, which does not seem to reduce to rights in this way. If Locke has the Grotian strategy in mind then the

burden is on him to show why liberty and equality cannot be enjoyed without rights. The burden of argument would be high, because he would be committed to making the stronger claim that rights are necessary for liberty and equality, not just that they are the best way to achieve these goods. In Chapter 1 I settled for a weaker sort of claim that rights are the best way (but not necessarily the only way) to achieve the essential goods I identified, and even this weaker claim required extensive argument. I think there is reason to doubt that Lockeans can be successful in showing that rights are necessary preconditions for liberty and equality.

Alternatively Locke might be suggesting a derivation of rights not dissimilar to my own. He might be claiming that universal rights are derived from moral values, in this case values concerning liberty and equality. But if this is the case he is neglecting to offer a crucial discussion of exactly how it is that rights follow from these values. Rights are certainly not entailed by moral values. And if rights are not understood to be preconditions for liberty and equality, Locke will have to explain why it is that rights are so important. I will discuss the details of my own derivation of rights from values (via reasons) in Chapter 5. But, if Locke is suggesting this type of rights derivation, it is this sort of discussion that his account needs in order to be more convincing and complete.

The lessons we learn from Locke do overlap somewhat with those from Grotius, which is indicative of his account being partly derivative of Grotius. Again, we find ourselves in need of a more extensive explanation both of what natural law is, and of how universal rights are derived from it. Nonetheless, as with Grotius, the continued importance and influence of Locke's account of rights gives us hope that the natural rights strategy holds promise, and may be made more promising yet if we can provide a more complete account of natural law and natural rights. Finally, in his discussion of rights to life, health and liberty, Locke presents us with ideas for the content of rights that have considerable intuitive power. As I have mentioned, I will agree with Locke that these are universal rights, though I believe that their justification needs to be filled out. I have already gone some way toward doing this

⁴² Mackie, *op cit*.

for the right to life (and arguably also of health) in my discussion in Chapter 1 of the value of each individual life. A further treatment of the issue will take place in Chapters 4 and 5.

The last natural rights theorist we will examine is Anthony Lisska.⁴³ Though perhaps not as renowned a figure as some of the other rights theorists I have discussed so far, Lisska is a contemporary thinker who has advanced a natural rights theory of some subtlety that is in some respects quite close to the kind of theory I have suggested we need. As such it will be useful to examine his thought and see what lessons we can learn. As with Grotius and Locke, we will examine both the promise and the problems of his theory with a view toward aiding our own progress.

Lisska follows the natural law thought of Aquinas (and ultimately of Aristotle) more explicitly than do Grotius and Locke. His account of natural law is an attempt to expand on a Thomist view by bringing into play recent work in metaphysics that he thinks is consistent with the thought of Aquinas. He suggests that six principles are needed for such an account to work: 1.) a theory of natural kinds; 2.) a theory of essence composed of dispositional properties; 3.) a metaphysics of finality determining obligatory ends; 4.) ethics as a second-order activity based upon the development of the dispositional properties in the individual that make up an essence; 5.) a conjunction of 'good' with 'end' as a terminal point of the natural process; and 6.) a consistent theory of practical reason. It is not my project to analyse each of these principles in detail, but together they clearly represent an attempt to discuss natural law in the sort of detail that I noted was absent in Grotius and Locke. Put very briefly, Lisska's view of natural law is that humans have an essence which indicates for them an 'obligatory teleology', whereby they have duties to do the things which lead to flourishing. Accordingly he realises the importance of overcoming the naturalistic fallacy, which he tries to do by criticising ontological assumptions on which it rests.⁴⁴ As in Aquinas and Aristotle,

⁴³ Anthony J. Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction* (Oxford: Clarendon Press, 1996), especially Chapters 8 and 9.

⁴⁴ Lisska speaks of overcoming Moore's naturalistic fallacy, while I have suggested natural law theorists need to overcome Hume's is/ought problem. Though the two points are not equivalent, they are nearly so. The problem for natural law theorists is that they must advance a theory of moral objectivity, and it is mysterious how they might do this without grounding normative claims in descriptive ones.

claims about human essence are of paramount importance in Lisska's theory. He thinks that a grounding of human essence can be aided by an appeal to recent work in metaphysics, such as the work of Saul Kripke and Hilary Putnam on natural kinds, and of Everett J. Nelson on nomic universals. His treatment of these complex subjects is rather schematic, but it indicates that there is hope in the strategy of using recent metaphysics to support claims that are centuries old.

Lisska's attempt to derive rights from natural law is similar to his treatment of natural law itself in the sense that it is more detailed and less mysterious than the attempts made by Grotius and Locke. His position is that the human essence consists of various dispositions, that these dispositions yield duties, and that these duties in turn yield rights. Let us look briefly at each of these steps. He thinks that his claim about human essence is clearly supported by empirical evidence, e.g. we can see it is true that humans have dispositions to continue in existence, to seek nutrition and growth, to have sensations and perceptions, to care for offspring, to be curious rationally, and to live in social units. He claims that the Aristotelian/Thomist obligatory teleology he endorses gives us duties to act on these dispositions, because we have a duty to flourish. That same obligatory teleology also gives us rights which protect these duties from interference by others. For example, it is not enough just that I have a duty to care for my offspring – it must also be true that I have a right to non-interference from others to such an extent that my duty can be carried out. The duty is necessary but not sufficient for the fulfilment of our obligatory teleology. Thus the class of rights will be restricted in certain ways by the class of duties to which it corresponds. The number and content of our rights will correspond exactly to the number and content of our duties. It also seems likely that the only rights we will have will be those relating to non-interference.⁴⁵

Lisska's treatment of natural law, and of the rights that follow from it, offers hope that a natural rights account can provide the sort of detail needed for it to be fully convincing.

Furthermore his strategy is not as far away from my own as it might initially appear.

Although he does not often speak explicitly about values, I think his account does fit the model I have proposed in the first section. Moral values, such as the value of life and the value of rational curiosity, are morally fundamental in Lisska's theory. It is true that these values are derived from claims about our dispositions, but dispositional claims are descriptive, not normative. As long as values are the most fundamental *normative* elements of Lisska's theory, and universal rights are derived from these values, then it fits the model I have suggested.

As I have noted, Lisska's appeal to recent philosophical work, such as the work of Kripke and Putnam, is a welcome feature of his theory. I am not as interested in a specific discussion of natural kinds or nomic universals as I am in the viability of the general strategy of supporting a natural law view with an appeal to recent philosophical work. Refreshingly, this strategy runs contrary to the view that some might hold that natural law is an antiquated kind of theory. We should feel free not only to look to recent work, but to work that has been done in contexts different from (though related to) natural law or natural rights. We will do this in the next chapter when we examine the modern discussion of moral objectivity.

Another important similarity between Lisska's thought and my own lies in his method of deriving rights from natural law. While he thinks that the derivation proceeds from dispositions to duties to rights, I will suggest a derivation that proceeds from a certain class of reasons to rights. There will be important similarities as well between the Aristotelian concept of dispositions and my treatment of shared reasons. But it is also important to note that there is a significant difference between Lisska and I in the last step of the derivation. Lisska believes that we have rights as a way of protecting our own duties, while I take the view that *x*'s reason to reject a given set of *y*'s principles simultaneously gives *x* a right and *y* a duty. It is not our own duties that give us rights, though it is our own reasons. This will become more clear in Chapter 5.

⁴⁵ Though this last point is less clear. If, for example, we have a duty to nourish ourselves, and we cannot do this without help from others, do we then have a right against others that they help us? It is

I believe it is too early to judge the success of Lisska's project. His discussion of natural law and natural rights is sometimes not as full as it could be, and often merely gestures at projects that need to be taken up in earnest, but it does not give us any reason to think that his project cannot be successful. But while I believe Lisska's thought has enough merit to deserve further attention, there are significant differences between our theories. His approach is more overtly metaphysical than the one I will suggest. As we shall see in the following chapter, I am sceptical of the success of metaphysical attempts to justify moral objectivity, which makes me inclined to justify natural law (and consequently natural rights) in a somewhat different way from Lisska. But it is possible that, contrary to what is suggested about the views surveyed in the next chapter, a metaphysical sort of moral realism may yet be viable, in which case Lisska's view would merit serious attention.

What I hope this chapter has established is a map for the way forward that will help to guide the rest of our project. Most generally, I have argued that our project of justifying universal rights must ground those rights in objective moral values (and principles) in order to be credible. I have also suggested that this sketch of a rights view can be understood to place us in the natural law tradition. I then suggested that an examination of natural rights theories broadly sympathetic to the one I have sketched teaches us valuable lessons that we can incorporate in chapters to come. Taking our lessons from Grotius, Locke, and Lisska as a collective, the most important of them can be summarised in the following way:

1. We would do well to have a secular, rather than a religious, concept of natural law.
2. Despite the tendency to think of natural law as a historical theory we should look to recent work in philosophy for support. This is true both of our search for a convincing account of natural law or moral objectivity, and also of our attempt to derive rights from objective moral values.
3. We must have a full and convincing account of what natural law is and how we come to know it.
4. If natural law is in some sense to be based on a concept of human essence or nature, we must come up with an account of human nature that is extensive and does not seem arbitrary or dogmatic.

5. In our account of objectivity we must find a way to evade Hume's is/ought problem and Moore's naturalistic fallacy.
6. We must devise a sound argument for how it is that universal rights follow from moral values and principles, and this will involve offering a convincing account of how rights and duties relate.
7. The content of universal rights must be explored in a more comprehensive way than we have found so far, and is likely to include (though perhaps not be limited to) intuitively plausible rights candidates such as the right to life, to health, and to liberty.

While these lessons will not comprise the only points that we will explore in the remaining chapters, they will nonetheless be among the most important issues explored. Issues one through three will be addressed in Chapter 3 (though the second point applies to all remaining chapters). Issues four and five have already been touched upon in our account of Dworkin's view of the sacred in the previous chapter, and they will be addressed in more detail when we revive that discussion in Chapter 4. Issues six and seven will be taken up in Chapter 5. The project which now clearly takes conceptual priority, though, is to explore what sort of natural law there might be and how we come to know it. This is the project of the next chapter, and will take the form of a survey of theories of moral objectivity, to see if there is at least a broad sketch of this sort of meta-ethics that is defensible. Chapter 4 will then describe and defend this theory of objectivity in detail, while Chapter 5 will show how rights, and particularly universal rights, follow from it.

Chapter 3

Moral Objectivism

The aim of this chapter is to explore different versions of moral objectivism with the aim of finding one on which to base universal moral rights. We have seen in the previous chapter that an objective meta-ethics is needed if we are to ground universal rights in a sufficiently secure way, i.e. if these rights are to be able to exist in the face of the dissent that will inevitably arise about their existence. When we find a promising version of objectivity⁴⁶ we will be able to explain and defend it in greater detail in the following chapter, and then show how universal rights follow from it in the final chapter. Our interest in the foundations of rights, then, demands that this chapter and the next depart from any explicit discussion of rights themselves in favour of a discussion of the concepts from which rights are derived. The issue of objectivism is a tree that has sprouted many branches, and I will be able to cover only some of them here (and those with varying degrees of completeness). The shape of my discussion can be taken to imply a substantive position concerning where the most important issues lie.

In the context of the thesis this discussion carries on the second phase that I discussed at the beginning of the previous chapter. That is, it continues the project of setting up the universal rights view at which I later arrive as one that enjoys significant advantages over alternative views. In the previous chapter this discussion took the form of arguing that we need to ground universal rights in objective values, thereby implicitly calling into question any universal rights view which fails to do this. In this chapter the argument is that objective values are best understood via the strategy of irrealist cognitivism. The chapter implicitly

aims to call into question any view of universal rights which is derived from alternative objective bases, such as those I will group under the general heading of moral realism. Now, even if the argument of this chapter succeeds, it will fall short of establishing that the view I suggest in subsequent chapters is the best possible view of universal rights. But it will go some way toward putting that view in a privileged position that is likely to lend it more authority and thus more interest.

Now to the argument of the chapter. I will argue that cognitivism is the crucial element of objectivism that needs to be established, and that the most promising way to establish it is through an irrealist objectivism based on the universality of reasons, such as that suggested by T.M. Scanlon, Thomas Nagel, Derek Parfit, Jonathan Dancy, and Michael Smith. Although versions of moral realism can in principle establish cognitivism, they encounter serious problems overcoming objections that have been put forward by subjectivists. The argument in this chapter does not defend a specific version of irrealist cognitivism in detail, but only attempts to show how this kind of objectivism evades some important subjectivist objections, and has at least a *prima facie* plausibility that accrues from its avoidance of ontological difficulties. If we can accomplish this, we will be in position to explain and defend our version of objectivism at greater length in the following chapter.

By moral objectivism I mean

the view that the objects of the most basic concepts of ethics (which may be supposed to be values, obligations, duties, oughts, rights, or what not) exist, or that facts about them hold, objectively and that similarly worded statements by different persons make the same factual claims (and thus do not concern merely the speaker's feelings).⁴⁷

The disjunctive character of this definition suggests that objectivism is actually many debates rolled into one: we might establish that objectivism is true either by showing that the objects of the most basic concepts of ethics exist objectively, or by showing that facts about them hold

⁴⁶ I will henceforth drop the description 'moral' from terms such as rights, objectivism, realism, cognitivism, etc. Unless otherwise noted, when I speak of any of these concepts or theories, the description 'moral' is implied.

objectively. I will explore the implications of this in more detail below. By subjectivism I mean the opposing meta-ethical view, namely that the objects of the most basic ethical concepts do not exist independently of what we feel or believe about them, nor do facts about them hold in a similarly independent way. We have some familiarity with the difference between objectivism and subjectivism from our discussion in the previous chapter.

There are at least three major sub-debates contained within the debate about moral objectivity, each of which indicate a different way of seeing the problem.⁴⁸ We look at the issue in an ontological manner if we are asking whether moral properties exist independent of people's beliefs about them; this is the debate between realism and anti-realism.⁴⁹ We pose the question in an epistemological manner if we are asking whether moral knowledge is possible; the debate here is between cognitivism and non-cognitivism. The question can also be asked in a logical/conceptual manner, as when we ask whether moral judgements should be construed as assertions about moral properties or facts, or whether they are best understood as expressions of an appraiser's attitudes; this is the debate between descriptivism and non-descriptivism. Though it is likely that a given theorist will come down on the same side of the objectivist question in each respect (such that a realist is likely also to be a cognitivist and a descriptivist), there are some combinations of views which could 'cross the lines' without incoherence. For example, it is possible to believe that moral properties exist in the world but that we cannot know them, whereby we would have realism and non-cognitivism. As we shall see, one could also be a cognitivist without being a realist. Similarly it is not incoherent to believe that moral properties exist but that moral judgements are best understood as expressions of an appraiser's attitudes, in which case we would have realism and non-descriptivism. The important issue to examine now, though, is what set of views one

⁴⁷ 'Ethical objectivism' in *The Cambridge Dictionary of Philosophy*, ed. Robert Audi (Cambridge: Cambridge University Press, 1995), 244.

⁴⁸ My classification here is influenced by the discussion of R.M. Hare in 'Ontology in Ethics' in *Morality and Objectivity*, ed. Ted Honderich (London: Routledge and Kegan Paul, 1985), 39-53. Peter Railton lists as many as thirteen different issues involved, though many of these can be subsumed under the categories I suggest. See his 'Moral Realism' in *Philosophical Review* 95 (1986), 163-207, esp. 164-165.

⁴⁹ I thus take moral realism to be an essentially ontological thesis. In doing so I am using the term more narrowly than do some contemporary theorists, such as Railton and Geoffrey Sayre-McCord.

must hold in order to consider oneself to be an objectivist. Is it the case that an objectivist must hold to all three 'objectivist' positions (realism, cognitivism, and descriptivism), or is the requirement for objectivism weaker than this?

3.1 The priority of cognitivism

It is central to the rest of my discussion in this chapter that cognitivism is the crucial issue for objectivists.⁵⁰ The establishment of cognitivism is necessary and may be sufficient for the establishment of objectivism. To see why, we need to remind ourselves why we do ethics in the first place. Different people may well have different reasons for studying ethics, and different moral theories emphasise different overarching questions, but it seems that one question that all students of ethics are concerned with is the one which asks 'How should I act?' or 'What should I do?' This may not be the only question we wonder about, and it may not even be the most important, but it is a question that we can agree to be of at least *some* importance.⁵¹ Furthermore, we wish not only to find an answer to this question intellectually, but to put our answer into practice. In order to do this we must have some belief about how we should act, and we must have some motivation to act on this belief. Now, if this is true, then the epistemological issue seems to be a crucial one in ethics, and this is precisely the issue addressed by cognitivism. If cognitivism can be established, then there are moral facts that can be known, i.e. we have an answer to the question 'What should I do?' Furthermore, depending on whether we adhere to internalism about motivation (which, following Parfit, I will later identify as moral belief internalism), knowledge of what we should do might give us adequate motivation to do that thing. I will leave aside the issue of motivation until the next chapter, but the important point for now is that, even if we cannot be motivated by belief

⁵⁰ Sayre-McCord makes a similar point in his 'Introduction: The Many Moral Realisms' in *Essays on Moral Realism*, ed. Geoffrey Sayre-McCord (Ithaca, New York: Cornell University Press, 1988), 1-23. His broader usage of the term 'moral realism,' though, leads him to say that cognitivism is the central issue for moral *realists*.

alone, the priority of cognitivism over both realism and descriptivism in the objectivist debate is not threatened by this problem, because realism and descriptivism simply are not in the business of addressing moral motivation. If cognitivism is in need of supplementation, that supplementation will come from a story about reasons, desires, or both – but again, I will leave that discussion for the following chapter.

We can see that realism and descriptivism, even if true, are not as well-suited to help us answer the question ‘How should I act?’ We will recall that realism concerns the issue of whether moral properties exist in the world. This is an interesting metaphysical question, but it is not one of practical value in morality unless these facts can be discovered, and are motivating in the right way. In other words, consideration of realism in light of practical moral concerns leads us back to the epistemological question of cognitivism. Now, it could be that the establishment of some form of realism is a particularly effective (or even the only effective) way to establish cognitivism. As I will argue in 3.7, I do not myself believe that realism is the only way to establish cognitivism. But there seems no reason to believe at this point that it is not a way – even a very effective way – of establishing cognitivism, and as such it is worthy of further examination.

Descriptivism is perhaps the least promising of the three routes for the objectivist to take. This is not to say that it is of no importance at all whether moral claims should be construed as assertions about moral facts: if we find that moral language is best understood in this way, it is highly suggestive that morality may be objective. It seems unlikely, after all, that the ways language is used arise by pure happenstance. But descriptivism’s persuasive force seems not to rise above the level of suggestion. However moral language is best understood to be used, it might nonetheless be in error, even quite fundamentally so. Perhaps morality seems objective to many people, and this has caused moral terms in our language to be used descriptively, but these people are in error. The possibility thus arises that

⁵¹ For example, much is often made of the fact that virtue theorists consider the question ‘What kind of person should I be?’ to take priority over the question ‘How should I act?’ But this does not mean they think the latter question to be wholly unimportant.

descriptivism could be true, yet morality could be subjective.⁵² In this respect descriptivism is no different from realism. What makes descriptivism a somewhat less promising avenue to pursue, though, is that its establishment seems to lack even the *potential* for leading us to cognitivism in the way that realism might. As I have suggested, the establishment of realism might well lead us to conclude that cognitivism is true – e.g. this will be the case if the moral properties in question can be known and are intrinsically action-guiding. But there is no particular understanding of descriptivism that would similarly yield cognitivism. It could always be the case that language is best understood as containing moral descriptions, yet these descriptions do not refer to anything real. As I have said, descriptivism is suggestive of objectivism, but I cannot see that it can be anything more than this.

This discussion has revealed a strategy for us to pursue in the rest of the chapter. We need to examine whether a defensible version of moral cognitivism exists. Our pursuit of cognitivism will take in a consideration of different versions of moral realism, because realism is a possible means to the end of cognitivism. If realism cannot be made to work we shall have to see if there exists an irrealist cognitivism that is defensible. However, because descriptivism is inadequate for the establishment of cognitivism, I will leave it aside for the remainder of the discussion.

3.2 On the burden of proof

Before I examine the substantive arguments at stake between subjectivists and objectivists I would like to discuss the merits of an opening move that is often employed by both sides, which is the use of a burden-of-proof claim. The general strategy is to claim that one's own position in the objectivism debate is the more plausible, and thus that the burden of proof lies with one's opponent to offer convincing positive arguments for why we should

⁵² In fact, as we shall see, Mackie suggests this is the case. See John Mackie, 'The Subjectivity of Values' in *Ethics: Inventing Right and Wrong* (London: Pelican, 1977), 15-49.

believe the contrary.⁵³ There are two curious features about this move. First, it is interesting that both objectivists and subjectivists seem equally comfortable making this claim, for they cannot both be correct! We might wonder how their disagreement arises: do they disagree about a single relevant issue (such as what our moral intuitions tell us), or do they disagree even about which issue ‘fixes’ the burden of proof (such as intuitions versus a certain philosophical argument)? Secondly, it is curious that the burden-of-proof strategy is deemed necessary at all. It seems to indicate that both sides in the debate lack confidence in their own positive arguments, and are more comfortable defeating the arguments of their opponents. We might wonder whether this lack of confidence is appropriate (from either side), given that both sides do have positive arguments for their positions. I will examine these two curiosities in turn.

First, why the widespread disagreement about where the burden of proof lies? An answer to this question requires that we investigate what consideration or considerations are used to fix the burden of proof. Since the burden-of-proof claim occurs at the beginning of an argument about the issue of objectivism, the candidates for issues that motivate its placement are somewhat limited. We might justify a placement of the burden of proof by claiming that moral intuitions are in our favour. This would of course require that intuitions be sufficiently similar among different individuals. Alternatively, we might claim that the moral phenomenology favours our position. We might say that morality ‘feels’ either objective or subjective, and claim that this is a good reason to place the burden of proof with the opposition. Clearly, it is possible that the issues of intuition and phenomenology might come to the same thing, because we might think that our intuitions are themselves determined by the phenomenology. It is otherwise mysterious how intuitions acquire their alleged normative force, and it is far from clear that we share intuitions in the way needed by an advocate of this intuitionist position, so I will focus on the claim about moral phenomenology.

⁵³ The claim is made by Mackie, McNaughton, Nagel, David Brink, and others. Brink’s discussion is unusual in that it provides a philosophical argument in support of his placement of the burden of proof. For a critical analysis of this see Ken Yasenchuk, ‘Moral Realism and the Burden of Argument’ in *The Southern Journal of Philosophy* 35 (1997), 247-264.

The claim under consideration, then, is that the burden of proof lies with one's opponent because the moral phenomenology favours one's own position. Since moral phenomenology refers to the way morality feels to us in our immediate experience, claims about whether it favours objectivity or subjectivity cannot be settled by philosophical argument. They must, rather, be settled by an empirical consensus about what morality feels like. But since both objectivists and subjectivists try to claim that the moral phenomenology favours their own side, it is clear that such a consensus is lacking among philosophers. Furthermore, we seem no wiser about the matter if we appeal to the opinions of non-philosophers, because the same lack of consensus appears to be present. It is fairly clear that, among people who are unfamiliar with philosophy, some (even non-religious people) seem to regard moral demands as objectively binding, while others regard them with a flexibility we might associate with a subjectivist outlook. So, although it is always risky to assume that a survey of the opinions of philosophers will indicate anything other than a survey of the opinions of philosophers, in this case their disagreement about how morality feels seems indicative of a disagreement among people generally. Since this is the case, I do not think that claims about moral phenomenology can be used to settle the question about where the burden of proof is located.

This brings us to the second curiosity about the burden-of-proof style of argument, namely that we might wonder why it is deemed necessary at all. As I have said, the very employment of the burden-of-proof claim implies a lack of confidence in the adequacy of one's own positive arguments. But why this particular lack of confidence in the debate about objectivism? As we shall see, the debate features positive as well as negative arguments made by both sides, arguments that can be compared and tested against each other. In this respect the objectivist debate is no different from other philosophical debates. But most contestants in most other debates refrain from trying to 'stack the deck' ahead of time by shifting a burden of proof onto their opponents. There seems no reason why a burden of proof in the objectivist debate cannot lie squarely in the middle, in between the subjectivist and the objectivist. This solution acknowledges the problematic nature of any effort to determine whether the moral

phenomenology favours one side over another, and it eliminates the unfairness that would result from attempting to coercively place the burden of proof on one side or the other regardless. I conclude that the entire burden-of-proof issue has been an unhelpful one in the objectivist debate. The arguments made by both sides are best examined without any prior bias concerning who has the higher burden to meet.

3.3 The subjectivist challenge

Now that we have cleared away preliminary issues we are ready to take a look at the substantive arguments involved in the objectivist debate. I will begin by examining important subjectivist arguments, then in later sections turn to various objectivist attempts to overcome them. One of the most daunting subjectivist arguments is an old one: the argument made by Hume that we cannot derive a normative conclusion from merely descriptive premises, i.e. that it is not possible to derive an 'ought' from an 'is'. The force of this argument in the present context is that objectivists need to find a way to fix some normative propositions as correct and some as incorrect, and the way this is often done is to say that (at least some) normative propositions follow from descriptive ones. Objectivists must either show how the (apparent) fact-value gap can be bridged, such that values really can be shown to follow from facts, or else show that the distinction is unimportant. We will examine attempts to do both.

Other subjectivist arguments are all to a greater or lesser extent derivative of, or rely upon, Hume's fact-value distinction. They can be divided into two camps: those which are non-cognitivist, and those which are part of an error theory. Non-cognitivists (or instrumentalists) claim that moral 'beliefs' describe only the attitudes of the speaker, not any facts about the world.⁵⁴ Gilbert Harman and Simon Blackburn are two prominent theorists

⁵⁴ Non-cognitivists come in different stripes. Prescriptivists (such as Hare) believe that moral language recommends a course of action (e.g. 'X is good' means 'Do X'). Emotivists (such as C.L. Stevenson) believe that moral language expresses only the feelings of the speaker (e.g. 'X is good' means 'Hurrah for X').

who subscribe to versions of non-cognitivism.⁵⁵ Harman argues that we can see that the world contains no moral facts by comparing the case of moral observation to that of scientific observation. He thinks that scientific observation is crucially different from moral observation, and that this difference can explain why it is reasonable to be a cognitivist in science, yet a non-cognitivist in ethical matters. A valid test of scientific facts is that they play an explanatory role in the world: e.g. a scientist who sees a vapour trail going through a cloud chamber in a given experiment is justified in surmising that a proton was present, because the fact of the proton's presence best explains the vapour trail. But morality is importantly different. If I see a group of hoodlums lighting a cat on fire, I am not justified in saying that there is a moral fact of wrongness present. This is because my reaction can be explained entirely in terms of my psychology or moral sensibility; e.g. I see the cat being burned and experience a certain psychological reaction. Any moral 'facts' are explanatorily superfluous in a way that scientific facts are not.

Objectivists have responded to this argument in at least two different ways.

Cognitive irrealists such as Nagel have denied that explanatory necessity is the right test of the existence of moral facts. I will examine this line of argument in a later section. Taking a realist line, Nicholas Sturgeon has argued that even if we accept explanatory necessity as a valid test, there is no reason to believe that moral facts do not play such an explanatory role.⁵⁶ It seems the simplest explanation of Hitler's (at least apparent) moral depravity is that there is a moral fact of the matter, i.e. that Hitler *was* morally depraved. Harman thinks this sort of explanation cannot be correct, because we would have exactly the same reaction to Hitler if we imagined all the non-moral facts of Hitler's actions as fixed, yet that there is no moral fact of Hitler's depravity. Even if moral facts offer what is in some sense a direct explanation of moral phenomena, he argues, they are not needed to explain those phenomena. In response, Sturgeon points out that Harman's test of factual superfluity could apply equally well to scientific 'facts.' If, in his experiment, the physicist saw a vapour trail and believed there was

⁵⁵ Gilbert Harman, 'Ethics and Observation' in Sayre-McCord, 119-124; Simon Blackburn, 'Errors and the Phenomenology of Value' in Honderich, 1-21.

a proton present, even if there was none, he would still be justified in his belief, because he has no reason to think his general theory to be mistaken. Correspondingly, we have no reason to think an objectivist moral theory mistaken. Sturgeon concludes that Harman has shown no special problem to exist about ethics as opposed to science, and that if Harman wishes to persist in his ethical scepticism, he is committed to being a sceptic about non-moral facts as well.

The debate between Harman and Sturgeon is in one important respect a stalemate.⁵⁷ We cannot conclude from the debate that moral facts exist, nor can we conclude that they do not exist. What we can conclude is that an alternative to the objectivist picture of the moral phenomenology exists and has some plausibility: it may be that our revulsion at seeing a cat being tortured feels objective, but an alternative subjectivist account of some plausibility exists. The subjectivist alternative is strengthened by the quasi-realist account of Blackburn. Much of Blackburn's contribution to the objectivist debate has been to show various ways in which a moral phenomenology which apparently points to objectivism can be captured on a subjectivist account. Following Hume, he claims that morality seems objective only insofar as we project our feelings onto the external world. A virtue of Blackburn's theory is that he is able to offer an account of how quasi-realism accords with the moral phenomenology in even apparently problematic cases, such as the strong pull of obligation we can sometimes feel to perform a certain action. We feel the pull of duty in such cases not because the duty is objectively valid, but because we have been brought up in a certain way, and as a consequence we look with great distaste (or even horror) at the possibility of disregarding our duty. I take Blackburn, along with Harman, to succeed in offering a plausible alternative picture to an objectivist account of the moral phenomenology. Together their arguments serve as a challenge to any objectivist who relies significantly on claims about this phenomenology. We will examine one such theorist in the next section.

⁵⁶ Nicholas Sturgeon, 'Moral Explanations' in Sayre-McCord, 229-255.

⁵⁷ Though this is a sort of victory for Sturgeon, because it is all that he tries to show.

The main subjectivist alternative to non-cognitivism is an error theory, and this strategy was suggested most famously by Mackie.⁵⁸ Mackie claims that moral statements are indeed the sort of claims that can be true or false, but that they are in fact all false. Morality feels objective to us, but this feeling is radically in error; consequently we make moral judgements to which we attribute a categorical force, judgements that are meaningful but erroneous. Mackie makes three arguments to support his error theory. He first suggests that the prevalence of moral disagreement throughout the world points to the fact that morality cannot be objective. I think any objectivist would acknowledge that it does seem to be a feature of the world that there is widespread disagreement about moral matters, and that at the very least this casts some doubt on the notion of moral truth. But Mackie's first argument cannot by itself do more than this. It could be that, even though people disagree about morality, some are right (in an objective sense) in their substantive views and some are wrong. It could be that the discovery of moral truth is possible but very difficult. David McNaughton offers an interesting account of how morality might be objective yet widely disagreed-upon with his comparison of the process of learning morality to the process of appreciating jazz.⁵⁹ In both cases, McNaughton claims, the subject experiences a change in perception, and sees the given situation in a new light. McNaughton does not say enough about the comparison to give the argument tremendous force, but the fact that this sort of explanation seems minimally plausible suggests that Mackie's first argument does not accomplish much. As Thomas Benningson points out, an argument such as Mackie's gains maximal force only if we can demonstrate that disagreement about moral matters is not only prevalent, but that it is irresolvable.⁶⁰ The error theorist would do well to supplement an empirical claim about disagreement in the world with an epistemological one about moral beliefs (i.e. that they are irresolvable). Mackie's second two arguments attempt to move us in

⁵⁸ See Mackie, 'The Subjectivity of Values.'

⁵⁹ David McNaughton, 'Moral Realism – An Outline' in *Moral Vision: An Introduction to Ethics* (Oxford: Blackwell, 1988), 39-65.

⁶⁰ Thomas Benningson, 'Irresolvable Disagreement and the Case Against Moral Realism' in *The Southern Journal of Philosophy* 34 (1996), 411-437.

this direction, for though they both directly concern the issue of moral realism, they have implications for cognitivism.

Mackie's second argument is the one he labels the 'argument from queerness.' Here he claims that, if moral properties or values exist in the way a realist suggests, they would have to be an utterly different kind of entity from anything else in the universe. This is because moral properties would have to be necessarily action-guiding in order to account for the motivational force and practical relevance of moral judgements. No other entities in the universe appear to have this sort of action-guiding quality. This puts a high burden on the moral realist, who must explain the unique ontology of values, as well as the apparently unique epistemological faculty we would have to use to discover them. Mackie suggests that these metaphysical and epistemological extravagances be rejected in favour of subjectivism.

The third argument from Mackie is an extension of his concern about queerness. It is that a moral realist is committed to explaining how the moral features of an action are linked to that action's natural features. In doing so moral realists are apparently committed to giving an account of how moral properties supervene on natural properties, and Mackie doubts the success of such a project. Like Mackie's second argument, this seems a legitimate question to ask of a would-be moral realist. Since moral realists claim that moral properties exist, they are committed to telling a metaphysical story about these properties as complete and coherent as any story that can be told about non-moral properties. At the risk of complicating the matter, then, it might be useful to see Mackie's second two arguments as combining to create a four-part challenge to moral realists. A moral realist must demonstrate that 1.) There do exist the sort of queer, action-guiding entities in question; 2.) We have an epistemological faculty which perceives these entities; 3.) Objective values are intrinsically motivating; and 4.) The moral quality of an action can be plausibly linked to the natural features of that action.

We have seen that several promising subjectivist arguments have been advanced, which indicates that objectivists will have several daunting hurdles to overcome. I will conclude the section by summarising the subjectivist arguments I take to be the most promising.

1. Bridging the fact-value gap is a problem any objectivist must face. It is in many ways the overarching problem of objectivism, in the sense that other problems are derivative of it.
2. Any objectivist who relies significantly on claims about moral phenomenology faces the burden of explaining why alternative explanations (e.g. quasi-realism) are unsuccessful.
3. Objectivists who attempt to achieve cognitivism via realism must deal with Mackie's four-part queerness challenge.

In the next several sections I will examine objectivist attempts to overcome these problems.

The next three sections will look at attempts to establish cognitivism via realism. I will begin with McNaughton's attempt to rely on claims about moral phenomenology.

3.4 McNaughton and moral phenomenology

A curiosity of McNaughton's account of moral realism is that he begins with a warning of sorts about the dangers of over-relying on moral phenomenology. He says 'the appeal to the nature of our moral experience, to what we might call the *moral phenomenology*, represents the starting point for an argument, not a conclusion. Only a presumption in favour of realism would have been established and presumptions can be defeated.'⁶¹ This does in fact seem to be a plausible account of the role moral phenomenology should play in a realist argument. But the reason it is so curious in this context is that McNaughton then proceeds to rely heavily on phenomenological claims to ground his account of realism and argue against the sort of subjectivist worries we encountered in the last section. I will argue that this strategy of grounding realism is unsuccessful.

The crux of McNaughton's argument lies in his discussion of moral observation. He claims that we can observe moral properties using our ordinary faculties, and that we do so regularly. For example, when we see children throwing rocks at a wounded animal, we can

simply observe that what they are doing is cruel. This sort of observation has parallels in the aesthetic domain, such as when we perceive the beauty of a sunset. For McNaughton, non-cognitivist accounts cannot be correct because they fail to account for the immediacy and authority of moral demands that are made on us in particular situations. To advocate non-cognitivism, then, is to seriously distort the picture of what it is like to be a moral agent in the world. Similarly, McNaughton also tries to address the third part of the argument from queerness by appealing to the moral phenomenology. He suggests that moral facts must be intrinsically motivating, because this is the only way we can make sense of the immediacy of moral demands. More broadly, the motivational picture McNaughton presents is one whereby an agent perceives a moral fact, which causes him to have a belief about what should be done, which in turn motivates him to act. McNaughton thus advocates a version of internalism about motivation, or moral belief internalism, which is the view that an agent can (at least sometimes) be motivated by a cognitive state alone.⁶²

It is clear from this discussion that McNaughton relies on phenomenological claims more than he initially implies he will. As we have seen in the previous section, the burden that this sort of argument must meet is that it must give us a clear reason to favour a realist phenomenology over the sort of quasi-realist alternative offered by Blackburn. I do not think McNaughton succeeds in doing this. First, it should be noted that the phenomenology of moral decisions will usually not be felt as dramatically as it is in McNaughton's example of the children and the wounded animal. Most moral 'demands' that we feel will be correspondingly less strong, which calls into question how widely applicable McNaughton's argument could be even if it worked. Second, I cannot see that McNaughton gives us any reason to favour his account of the phenomenology over Blackburn's. It appears Blackburn would not be bothered by this example, and would explain it in the following way: the natural facts which encompass the scenario of the children torturing the animal cause the natural facts which encompass our psychological reaction. This psychological reaction might

⁶¹ McNaughton, 40.

well be very strong, might be felt immediately and might well motivate us to act in certain ways, but this is still entirely explicable in terms of natural facts. As we have seen, Harman would give a similar account of the scene. It appears that the factors which McNaughton thinks swing the phenomenology in the realist's favour are the immediacy and felt authority of (at least some) moral demands, but if this is so, he needs to offer a more convincing argument concerning why a non-cognitivist cannot account for these features. I harbour doubts about whether this strategy of argument can be successful, but perhaps I will yet be proven wrong.

Regardless, it must be admitted that not all of McNaughton's arguments rely on claims about phenomenology. He tries to meet the concerns expressed in the first, second, and fourth parts of the argument for queerness by offering a sketch of how values can find a place in a physicalist account of the world. Physicalism is the view that all objects in the world are physical objects. McNaughton advocates a 'modest physicalism' whereby not all properties of objects are physical properties: he allows for the existence of emergent non-physical properties, properties which arise from the interrelations of physical objects but are not reducible to physical properties. He claims that moral properties are these sorts of emergent properties, and arise from complex interrelationships between human beings.

This is the beginning of a metaphysical picture which could turn out to be quite promising. Unfortunately, McNaughton provides only this bare sketch, perhaps because he thinks he has already made the case for moral realism via his arguments concerning phenomenology. The sort of modest physicalism McNaughton advocates would need to be defended on its own merits, not just on whether it can allow for the existence of moral properties. Just as clearly, we would need a more detailed explanation of how moral properties emerge from interactions among agents, how they are known, and how they motivate us, and these explanations are likely to be lengthy and complex. There is no reason to think that the metaphysical picture McNaughton offers cannot work, and as such it merits

⁶² This view can be contrasted with moral belief externalism, which holds that desire must always have a role to play in motivation. I will discuss this internalist-externalist debate about motivation in more

elaboration. But there is also not enough reason presently to think that it can work, so it cannot convince us of the truth of moral realism as it stands. I conclude that McNaughton's argument is unsuccessful in its attempt to surmount the kind of subjectivist hurdles we saw in the previous section. In the next two sections we will take a look at more complex metaphysical explanations of moral realism to see if we can yet find a way to establish cognitivism.

3.5 The analogy with secondary qualities

We have seen that McNaughton's metaphysical picture was not sufficiently complete to provide a convincing solution to the argument from queerness. We will now turn our attention to a different way to argue for the existence of moral properties, which is to claim that they resemble secondary qualities in important respects, and that, since we allow for the existence of secondary qualities, we should also admit the existence of values. I will focus on an argument of John McDowell's, for although McDowell is not the only theorist to suggest this strategy, he is perhaps the best-known.⁶³ I will follow McDowell in taking colour to be the operative example of a secondary quality, though the analogy between colours and values is meant to work equally well for other secondary qualities such as tastes and sounds. If the analogy can be made to work, it may well present us with the sort of plausible metaphysical picture of moral properties that can overcome the queerness hurdle. More generally, it might succeed in showing how values can emerge from certain kinds of facts, thereby bridging the fact-value gap. I will argue, however, that McDowell does not succeed in his attempt to show that the analogy works, and that it is unclear how the attempt could be made more successfully.

Considered against the subjectivist arguments we have already examined, the strategy of claiming that values are analogous to secondary qualities appears to require a

detail in the next chapter.

⁶³ John McDowell, 'Values and Secondary Qualities' in Honderich, 110-129.

certain argumentative structure. First, it requires that there is available to us a coherent and plausible story about what secondary qualities are and how they exist. If a comparison with secondary qualities is to make values less mysterious, then secondary qualities must themselves be sufficiently unmysterious. Second, it requires that the metaphysical story told about values is sufficiently similar to that told about secondary qualities. This step is in many ways the crux of the argument, and unsurprisingly it is the issue to which McDowell devotes the most space. Third, it requires that we have a reason to prefer the realist picture that emerges to an anti- or quasi-realist one such as those suggested by Harman and Mackie. This third step is important, because it is possible that we could have a coherent picture of the way in which values are importantly similar to secondary qualities without actually having any reason to favour that picture over subjectivist alternatives.

I think the first step in the argument can, despite some lingering controversies over secondary qualities, be accomplished. McDowell defines a secondary quality as

a property the ascription of which to an object is not adequately understood except as true, if it is true, in virtue of the object's disposition to present a certain sort of perceptual appearance: specifically, an appearance characterizable by using a word for the property itself to say how the object perceptually appears.⁶⁴

Thus when we say *x* is yellow, we mean simply that *x* appears yellow to a normal observer under normal conditions. A distinctive feature of secondary qualities is that they are neither wholly objective nor wholly subjective: like the emergent properties discussed by McNaughton, they are the products of properties that exist independent of observers, yet secondary qualities are themselves different from the properties from which they are derived, and are not reducible to them. Secondary qualities are dispositions, like fragility and solubility, because they display a tendency to react in characteristic ways in certain situations.⁶⁵ As such, a secondary quality is a potential for the object to which it belongs to

⁶⁴ *Ibid.*, 111.

⁶⁵ Jonathan Dancy notes that although McDowell defines secondary qualities as existing 'in virtue of a disposition,' this is misleading, because his account consistently suggests that the relation of secondary

enter into a particular causal interaction. For example, if something is red, its property of redness exists independent of human perception; yet it would make no sense to say that the redness itself exists unless the property is perceived by (normal) human perceptual mechanisms. This is because, as we have seen, the identity of redness is tied essentially to the experience of it.

The second step of the argument is more problematic. To begin, there seems to be a phenomenological implausibility about tying the experience of value closely to the experience of colour. Colour experience seems more immediate, direct, and certain than value experience. Jonathan Dancy, despite being himself a moral realist, claims that we are at a greater phenomenological remove from value than we are from colour, and that this gives us a reason to doubt the success of the analogy as McDowell has framed it.⁶⁶ Dancy notes that although value might be seen as a sort of disposition, there is a 'raw' nature to experienced colour which makes colour unlikely to be a disposition, even a very thin one. Though I have criticised McNaughton for an over-reliance on (contentious) phenomenological claims, Dancy's claim here is useful as a *prima facie* reason to doubt the success of McDowell's analogy.

Although Dancy's phenomenological worry is not decisive in itself, it points to a deeper problem with the analogy between values and secondary qualities that is expressed by Bernard Williams.⁶⁷ The problem is that ethical reactions, unlike colour perceptions, include psychological and social elements, which indicates that if we say that values are a part of the world, this 'world' needs to be construed in a richer sense than the 'world' of secondary qualities. Another way of expressing the problem is to say that colour experience, unlike value experience, seems to be a merely causal one. When we look at a red rose, the property of redness causally interacts with our perceptual mechanisms, which causes us to think that the rose is in fact red. But there seems to be an extra complication involved in the perception of values. To borrow McDowell's example, let us say we see a steep cliff and assess it as

qualities and dispositions is not one of dependence, but of identity. See Jonathan Dancy, 'Objectivity' in *Moral Reasons* (Oxford: Blackwell, 1993), 144-165, esp. 160.

dangerous. In making this evaluative assessment we seem to be suggesting that the cliff *merits* a fearful reaction in a way that colours cannot be said to merit a certain perception in us. Upon perceiving the relevant details of the cliff we are led to believe that we *should* perceive it as dangerous, and that others may be blameworthy if they fail to do so. We do not, by contrast, tend to blame someone for failing to perceive the redness of a rose.

McDowell's response to this objection is that the alleged difference between causing and meriting simply does not amount to anything significant. He claims that for an object such as a cliff to merit fear is simply for it to be fearful, i.e. to contain the property of fearfulness when perceived, in an analogous way that a given object might contain the property of redness. The fearfulness of the cliff, according to McDowell, interacts with our perceptual mechanisms in the same direct way that the redness of a rose does. But this position leads McDowell into a difficulty that relates to Mackie's argument from moral disagreement. As we saw in section 3.2, it seems that even objectivists must concede that there is widespread disagreement about moral matters throughout the world. There is a tremendous discrepancy between the amount of disagreement about moral matters on the one hand, and the amount of disagreement about secondary qualities such as colours on the other. This discrepancy should not exist if there is no significant difference (as McDowell claims) between the 'meriting' involved in value perception and the 'causing' involved in colour perception.

McDowell does address this discrepancy of levels of disagreement, but does so in a way I find puzzling. He first points out the merits of widespread moral disagreement: he claims that the prevalence of moral disagreement keeps us on our toes and prevents us from being lulled into a false and unreflective contentment. This comment seems odd because what is at issue is the fact that the *quantity* of moral disagreement is so high – the alleged value or disvalue of the disagreement seems to be beside the point. McDowell then claims that, despite the existence of widespread moral disagreement, we are still justified in

⁶⁶ *Ibid.*, 162.

⁶⁷ Bernard Williams, 'Ethics and the Fabric of the World' in Honderich, 203-214.

supposing his form of moral realism to be correct, because we will be able to back up this supposition with explanations that show how our moral responses are well-placed. But although this second claim succeeds in addressing the correct issue, I cannot see that it does so in a satisfactory way. Particularly, we are left wondering what will count as a successful explanation in this context. If the validity of an explanation is governed by arguments McDowell has already made (e.g. that for a cliff to merit fear just is for it to be fearful) then explanations are not playing any additional (and helpful) role at this stage. In this case they would not help to explain the discrepancy between disagreement about secondary quality perception and disagreement about moral perception. If the validity of an explanation is governed by some new criteria, we need to know what those criteria are, and how they help us to explain the discrepancy that is puzzling us. Either way, McDowell has not succeeded in explaining the existence of the discrepancy, and because of this I do not think he has succeeded in drawing a sufficiently tight parallel between values and secondary qualities.

I have tried to argue that the second part of McDowell's argument fails, and if this is so, his overall argument cannot succeed. Nonetheless I will add a few comments about why I think the third part of his argument is also problematic. We will recall that what I have called the third part of the argument (but which McDowell actually addresses first) is the claim that even if coherent and plausible, the realism based on an analogy between values and secondary qualities must pass an additional test of being superior in some way to non-cognitivist alternatives, such as those offered by Harman and Blackburn. McDowell argues that it is superior on the grounds that a realist account accords with the moral phenomenology better than non-cognitivist accounts do. Since we have already seen the problems associated with this sort of argument in our discussion of McNaughton, I will not dwell on them here. I will only note that McDowell relies on the claim that non-cognitivists, instead of describing the moral phenomenology, are committed to 'correcting' it. McDowell may yet be right about this, but he is not clearly right, and he (or McNaughton, or other moral realists) will have to show more precisely why quasi-realism cannot account for the moral phenomenology.

I conclude that McDowell's argument is unsuccessful. It may be too early to pass judgement on the larger question of whether an analogy between values and secondary qualities can be made to work, but I myself doubt this strategy's chances of success. There does seem to be a fundamental difference between the simpler, causal experience of colour and the more complex, psychologically-rich experience of value, a difference which poses a serious threat to the analogy's ability to overcome Mackie's queerness objection. For if the experience of value is unique, this would seem to accord with Mackie's claim that in order for values to exist they would have to be an ontologically unique kind of entity. In the next section we will examine yet another strategy of accounting for moral realism, that of claiming that moral facts are a special kind of natural fact.

3.6 Naturalistic realism

The kind of realism we might call 'naturalistic' has become a movement of sorts in contemporary moral philosophy, having been advocated in one form or another by Peter Railton, Sturgeon, and Richard Boyd, among others.⁶⁸ Naturalistic versions of realism claim that natural facts are, broadly speaking, the only kind of facts in the world, yet moral facts are a special kind of natural fact. The upshot of this strategy is that moral facts are shown to be much less queer than Mackie supposes, and are shown to play an explanatory role in the world in a way that Harman denies. This explanatory role is said to be confirmed by predictions made by the theories in question, predictions that accord with various features of morality as it is actually practised in the world. This kind of realism has been particularly attractive to theorists who possess a deep respect for scientific method and scientific progress, because its ambition is to show how moral realism fits into the best current understanding we have of a scientific framework. And as with the other versions of realism we have examined, naturalistic realism purports to explain not only how moral facts exist in the world, but also

⁶⁸ Railton, 'Moral Realism'; Sturgeon, 'Moral Explanations'; Richard N. Boyd, 'How to Be a Moral Realist' in Sayre-McCord, 181-228.

how we can know them. It thus addresses the issue of cognitivism we saw to be crucial in section 3.1.

My analysis of naturalistic realism will focus on the thought of Railton, whose essay 'Moral Realism' is acknowledged to be a classic, and to have greatly influenced subsequent naturalistic accounts. I will first attempt to summarise Railton's argument, showing in the process how he attempts to overcome the subjectivist hurdles we examined in section 3.2. I will then point out what I believe to be problems with Railton's account, and perhaps with the naturalistic strategy generally. Specifically, I will argue that Railton allows for no conceptual space for freedom of the will, and also that his account of flourishing fails to escape concerns about the naturalistic fallacy which are closely related to the problem of the fact-value gap.

Giving a brief account of Railton's long and complex argument is no easy task. He thinks that the moral story begins with subjective interests, which he suggests are secondary qualities. The mention of secondary qualities reminds us of McDowell's argument, but Railton's claim is different in two respects. First, it is subjective interests, not values, that he is connecting with secondary qualities. Second, the nature of the connection is different: instead of claiming that subjective interests are analogous to secondary qualities, he is claiming that subjective interests *are* secondary qualities. As such, secondary qualities supervene upon primary qualities of the perceiver, the object perceived, and the surrounding context. Railton calls this set of qualities the 'reduction basis' of the secondary quality (i.e. the subjective interest).

We have so far a naturalistic account of how we have subjective interests, but Railton realises this can only be the beginning of his story. It seems that any theory of moral realism must account for the fact that our subjective interests are sometimes mistaken and can be corrected, and Railton tries to account for this in his next step by introducing the notion of an 'objectified subjective interest.' He claims that an agent has such an interest in *x* in a certain situation just when his idealised self would want him to want *x* in that situation. By extension, *x* is (morally or non-morally) good for the agent just when *x* is in the agent's objective interest. The immediate question this account raises concerns the operative criteria

for an idealised self. For Railton these criteria are complete and vivid knowledge of oneself and one's environment, and the possession of a non-defective instrumental rationality. But even if these criteria are adequate for idealising our interests, are they attainable? It would seem at first that even if the second criterion is attainable, the first one must surely be out of reach, for it entails that an agent have 'unqualified cognitive and imaginative powers, and full factual and nomological information about his physical and psychological constitution, capacities, circumstances, history, and so on.'⁶⁹ It might be objected that it is impossible for anyone ever to be able to achieve such a state, or at least impossible for moral agents to achieve it on the consistent basis Railton requires. However, Railton does have a reply to such an objection. He suggests that we align our subjective interests with our objective ones by a method of trial and error, and sometimes without even consciously realising we are doing so. To take a non-moral example, when we are dehydrated we might learn what is best for us by first drinking milk and having a negative reaction, then later happening across a bottle of soda and feeling better upon drinking it. Admittedly the moral realm adds an extra complication, because the relevant idealised view will be not just a personal one, but a social one. It requires us to determine what would be rationally approved of were the interests of all potentially affected individuals counted equally under circumstances of full information. This gives us a standard of social rationality, and the discontent produced by departures from this standard may produce a feedback that, analogous to the negative impact of the milk, promotes the development of norms that better approximate the ideal of social rationality.

At this stage, though, we might feel we have lost the metaphysical story in favour of pursuing a practical one. We know that as a naturalist Railton is committed to providing a natural ontology of the processes described above, and so far we have seen only his ontology of subjective interests. His ontology of objectified subjective interests is broadly similar to that of (mere) subjective interests: objectified subjective interests have a reduction basis, and this basis is the truth-maker for the claim that a given interest is an objective interest of ours. Objective interests supervene upon natural and social facts, e.g. in the dehydration example

⁶⁹ Railton, 173-174.

these would include facts about the agent's circumstances and constitution. Now, it is true that this account of supervenience is not as complete as it could be – it is schematic and does not pretend otherwise. Nonetheless, it seems promising in its schematic way. Railton points out that it is not fundamentally different from the sort of supervenience relation usually accepted to hold between chemistry and physics.

We have not examined Railton's entire argument, but I think we have seen enough to recognise the argument's promise in rebutting Mackie's queerness objection. We will recall that we summarised Mackie's queerness objection as consisting of four parts (see section 3.3), and it seems that Railton's account has an answer of some plausibility for each of the parts. Regarding the first part, Railton can claim that moral facts are not ontologically queer because they are, in essence, natural facts. He can argue that we do not need a special faculty in order to observe moral facts, as opposed to natural facts, for the same reason. As for the connection between moral facts and motivation, it is our interest in minimising social disharmony that motivates us to continually refine our moral judgements, bringing our subjective interests more in line with our objective ones.⁷⁰ Finally, as we have seen, objective interests supervene upon natural facts to create moral facts, and there seems no reason why this supervenience relation need be considered more mysterious than others that are commonly acknowledged in the natural world. This is but a sketch of how Railton would handle Mackie's argument, but the important point for now is that there is no reason at this level to think that Railton would be defeated by the queerness objection.

How would Railton fare against other subjectivist arguments we have examined? We will recall that the crux of the arguments of both Harman and Blackburn is that there is no reason to favour a realist view over an anti-realist one, because an anti-realist view can be coherent, fully explanatory, and in accordance with the moral phenomenology. The reason Railton thinks we should favour his realism over these views is one that scientists use to favour one theory over another: he thinks that his naturalistic realism has superior predictive

⁷⁰ It seems that this motivational picture might be amenable to either moral belief internalism or externalism.

power. Indeed, he does show that his theory predicts some historical moral trends that have been borne out in the world. His theory predicts that the scope of who is considered morally important in the world to a given group of people will gradually expand through history (e.g. from family to tribe to nation, etc.), and it does seem to be the case that moral discourse has evolved to consider at least the whole of the human race as morally significant. His theory also predicts that moral principles will increasingly enjoy an intrinsic connection with their effects on human interests, which has increasingly been the case as we have moved from a sacred basis of morality involving God's commandments to a secular one.⁷¹ His theory also predicts that some areas of morality will yield greater agreement than others, e.g. prohibitions of aggression or theft will be widely agreed-upon, while matters of social hierarchy and social responsibility will be less so. Since all of these moral trends are commonly acknowledged to be a part of our world, and are not predicted by any sort of subjectivist morality, the fact that they are predicted by Railton's realism gives us a reason to favour it over subjectivist alternatives, such as Blackburn's quasi-realism.

Nonetheless there is a problem with Railton's account that makes me disinclined to favour it. The problem concerns his ability to close, or bridge, the fact-value gap. It appears that on Railton's account there must be some reason why it is good to objectify subjective interests, why it is good to avoid social disharmony, etc. Railton has surprisingly little to say about this. It cannot be the case that reason alone directs us to do these things, for Railton is clear in endorsing a limited, instrumental account of rationality. He addresses the issue by claiming that, even though rationality goes relative when it goes instrumental, epistemology (including moral epistemology) need not follow, because epistemic warrant may be tied to an external criterion. For example, we are warranted in saying that we know we should avoid social disharmony because of the relation of the moral fact (i.e. that we should avoid social disharmony) to an external criterion. But what is this criterion? Though it is barely mentioned, the relevant criterion appears to be a concept of flourishing, understood as

⁷¹ Though of course 'progress' (if this is indeed progress) has been uneven: Kant's morality serves as a counter-example to this trend. The source of the categorical imperative is just as external to human

reproductive fitness.⁷² But why should flourishing be understood in this way? Railton does not tell us, but we are left to infer that it is because moral facts just *are* determined by evolutionary considerations. Evolution encourages and rewards reproductive fitness, therefore the relevant concept of flourishing is reproductive fitness.

If this is what Railton is arguing, then it seems that he has just failed to bridge the fact-value gap in any convincing way. He is asserting that a fact (evolution encourages reproductive fitness) yields a value (we should avoid social disharmony) without giving any account of how this extraordinary derivation is achieved. As we saw in section 3.3, this is exactly the sort of move that Hume has claimed we cannot make. As such it appears that Railton's account, though it is much more subtle and complex, may not ultimately differ much from various accounts of evolutionary ethics recently criticised by John Lemos.⁷³ Lemos considers a number of recent attempts that have been made to move from facts about evolution to values, and shows that none of the attempts builds the sort of bridge between facts and values that is required. It seems clear that Railton's argument would suffer from the same problem. It is an open question whether the interests and acts that evolution rewards are good or not, a question that cannot be settled by facts about evolution alone. As Lemos notes, it is possible that evolution could encourage torture and murder, but this does not give us an obligation to accept these acts as good.

There is another reading of Railton that may render his traversal of the fact-value gap less mysterious, but only at a price. We may read his project as a purely descriptive one of reporting what we *do* do rather than what we *ought* to do. It could be that clusters of natural facts interact in such a way as to lead us to have subjective interests, to objectify our subjective interests, to gradually bring our subjective interests more closely in line with our objective ones, and so forth, and that there is nothing more to the story. If this series of interactions does fill out the moral world, then it is not clear there is room for a meaningful 'ought' at all.

interests as God's commandments are held to be.

⁷² Railton, 179 (footnote).

⁷³ John Lemos, 'Bridging the Is/Ought Gap with Evolutionary Biology: Is This a Bridge Too Far?' in *The Southern Journal of Philosophy* 37 (1999), 559-578. Lemos criticises the accounts of Larry

This might remind us of our discussion of McDowell in section 3.5. There we saw that McDowell had trouble accounting for the apparent fact that values merit a certain response, while colours only cause a response. On the present reading of Railton this is not a problem, because moral facts are said to cause a response in just the same way that secondary qualities do. But of course this raises a new problem, a problem of free will. It is not clear on this reading of Railton how agents could possibly have any freedom, moral or otherwise. Everything we think and do is the result of interactions of natural facts, and it is mysterious how we could be said to have any control over these interactions. Now, it is true that the problem of free will is hardly exclusive to (a particular reading of) Railton – it lurks behind all of moral philosophy, indeed all of philosophy. It is mysterious even on a less naturalistic picture how we could have freedom of the will, and in what sense we might have it. Furthermore, some moral philosophers (most famously Spinoza) have been happy to embrace determinism, insisting that ethics is still a meaningful project within such a picture. But at the very least, ethics seems less than full-blooded when considered within determinism. We usually assume that to say that we ought to do x implies not only that we can do x but that we could choose not to do x . On this reading of Railton, though, to say that we should act in a way that maximises our reproductive fitness means only that we do act in such a way. Thus if the fact-value gap has been bridged, it has been bridged only in a revisionist sense that greatly weakens the notion of what it is for a given x to be valuable. In the next section, when I defend irrealist cognitivism, I will of course fall far short of demonstrating conclusively that it allows for free will, and in fact I will not even try to demonstrate this. Nonetheless I think the picture of irrealist cognitivism has the virtue of not being incompatible with free will, which makes it significantly different from Railton's account on our present reading.

I conclude that although Railton's account manages to provide promising answers to several subjectivist challenges, it encounters serious problems with regard to the most general subjectivist challenge, that of the fact-value gap. I am not making the stronger argument that

Railton's account cannot succeed in some revised form, nor am I suggesting that the entire project of naturalistic realism is necessarily a failure. I am suggesting only that I cannot see how it can be made to work, and that this makes me disinclined to favour it as the objective basis for rights I am searching for. More generally, this discussion will conclude our survey of attempts to establish cognitivism via realism. This strategy of establishing cognitivism seems too problematic in its current forms to endorse. I will now turn my attention to the other general strategy for establishing cognitivism, which is to claim it can be grounded without a resort to ontologically-loaded claims about the existence of moral facts.

3.7 Irrealist cognitivism

Irrealist cognitivism is the kind of objectivism I wish to defend. The best-known recent advocates of this position have been Scanlon, Nagel, Parfit, Dancy, and Smith, though the tradition extends as far back as Kant.⁷⁴ Generally speaking, the position states that we can know moral truths even though those truths do not correspond to any facts that comprise the fabric of the world. It allows us to speak of moral facts, so long as we understand those facts to be something other than the ontologically-loaded entities we have been considering in our discussions of realism. Instead of a correspondence to such entities, irrealist moral facts rely crucially on claims about reasons, and particularly on claims about the universality of reasons. I will give a fuller account of reasons, and particularly of what I will call shared reasons, in the following chapter. What I hope to accomplish in this section is to explain what irrealist cognitivism is in a broad sense, and show how the strategy has the potential to

⁷⁴ T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998); Thomas Nagel, *The View From Nowhere* (New York: Oxford University Press, 1986), especially Chapters 8 and 9; Derek Parfit, 'Reasons and Motivation' in *Proceedings of the Aristotelian Society* Supplementary Volume 71 (1997), and 'Rationality and Reasons' (forthcoming); Jonathan Dancy, *Practical Reality* (Oxford: Oxford University Press, 2000); Michael Smith, *The Moral Problem*; Immanuel Kant, *The Moral Law: Groundwork For the Metaphysic of Morals*. All subsequent mentions of these authors will refer to these respective works unless otherwise noted. It should be noted that, regarding Nagel, there is a terminological confusion with regard to his position, because I call it irrealism while he prefers to call it 'normative realism.' But on the way I am using the term 'realism'

overcome the subjectivist arguments we have examined. This should serve as a useful transition to the discussion of Chapter 4, and a helpful introduction to it.

Most comprehensively, we might want to explore these issues regarding all of the authors above. Certainly all of them are sufficiently significant and influential to merit such treatment. But to do so would stifle the flow of our overall project, so I will consider only the accounts of Scanlon and Nagel, and treat them as paradigmatic examples of irrealist cognitivism. Now the central question an irrealist cognitivist must answer is, naturally enough, how cognitivism can be achieved without realism. In order to gain some perspective on this problem it might be helpful to remind ourselves of how cognitivism was purported to be achieved *within* realism. The idea there was that moral facts have some sort of existence in the world, and that we know them by perceiving them. Though moral facts are not said to exist physically like trees, the way that we know about moral facts is said not to be fundamentally different from the way that we know about trees. In both cases we are considering entities which exist in the world, which we perceive with our faculties, and which we come to know about through our perception of them. It should also be noted that this kind of epistemology would broadly hold even for the sort of non-naturalism suggested by G.E. Moore. While Moore thinks that the good is not a part of the natural world, he nonetheless thinks it is a property that helps to comprise the fabric of the world, and a property to be known through perception.⁷⁵ Thus with regard to scientific realism, naturalist moral realism, and non-naturalist moral realism, it is true that we know facts of the relevant kind because they exist and we can perceive them.

The alternative metaphysics of irrealist cognitivism, though, leads us to embrace a different moral epistemology. Obviously, if moral facts are not entities in the world, then moral truth cannot be a matter of correspondence to such entities. As I have mentioned, the alternative offered by irrealist cognitivism relies crucially on claims about the nature of reasons. The crux of the position is that we can have a moral reason to do or not do x , and

his position is clearly an irrealist one. This sort of point is brought out by Stephen Darwall in his 'How Nowhere Can You Get (and Do Ethics)?' in *Ethics* 98 (1987), 137-157, esp. 143.

that the presence of this reason indicates that there is a moral fact of the matter about x (e.g. that doing x is good or bad, or perhaps right or wrong, respectively). The notion of a reason is thus seen as normatively loaded: to have a reason is to have a *good* reason. But at the same time it is not ontologically loaded, for reasons do not take up any 'space' in the world. Scanlon tries to dispel metaphysical worries about reasons by comparing moral reasoning with mathematical reasoning. He claims that just as my judgements about arithmetic are judgements about a subject matter independent of me (i.e. that I can be mistaken about), so my judgements about what there is reason to do are about a similarly independent subject. But just as we need not accept arithmetical Platonism to make the former case true, so we need not accept realism about values to make the latter case hold.⁷⁶ The analogy is useful in showing in a general way how irrealist cognitivism is meant to work, though of course it begs the question of why disagreement is so much more prevalent in ethics than it is in mathematics. But I think Scanlon addresses the problem of moral disagreement in a satisfactory way, and we will touch on this in the next chapter.

Since the subjectivist arguments examined in section 3.3 have defined the parameters of our examination of objectivism to this point, a useful way to defend irrealist cognitivism for the purposes of this discussion will be to show how it can handle those subjectivist arguments better than its competitors. In some cases this is not difficult to do. For example, Harman's concern about how values fit into an explanation of the world does not have any force in the present case, because irrealist cognitivism just is not in the business of claiming that values must play such a role in the world. As Nagel says of the sort of picture envisioned by both Harman and realists such as Sturgeon and Railton, 'an epistemological criterion of reality is being assumed which pretends to be comprehensive but which in fact excludes large domains in advance without argument.'⁷⁷ For the same reason, the cognitive irrealist need not be concerned about alternative metaphysical explanations of moral phenomena, such as Blackburn's quasi-realism. Likewise for Mackie's queerness argument: again, the cognitive

⁷⁵ G.E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1971).

⁷⁶ Scanlon, 62-63.

irrealist is not in the business of explaining how action-guiding entities can exist in the world, how we can know them, how they can motivate us, or how their moral features and natural features relate. Admittedly, the third part of Mackie's queerness challenge will still apply in a modified form, as the cognitive irrealist is still committed to explaining how we are motivated to act on reasons we have. This appears to raise the difficult internalism/externalism question about motivation that has been so prevalent in recent discussions of objectivism.⁷⁸ As I have said, I will treat this issue at some length in the next chapter.

All of the subjectivist arguments mentioned so far are clearly arguments against a realist position, so it is hardly surprising they can be easily side-stepped by irrealism. But it is not clear that a cognitive irrealist can avoid the problem of the fact-value gap with similar ease. To be sure, the gap may manifest itself in a different way than it does for the realist. We saw that for Railton it is mysterious how natural facts about evolution can yield normative facts about what we should do. The question in Railton's case thus seems to be an ontological one of how one kind of fact in the world (natural) can yield another kind (moral). But the irrealist's avoidance of moral ontology may not exempt him from fact-value concerns, because he must give an account of how reasons are justified, and it is possible that this justification may have to rest on claims about non-normative facts. Nagel thinks that our reasons are justified by way of acceptance from an objective standpoint, a standpoint which excludes the personal idiosyncrasies of individuals and is instead composed only of what they share in common. Assuming that such a standpoint can actually be reached, we might wonder what makes the acceptance of reasons from this standpoint the proper test of their validity. It apparently rests on the more general epistemological principle, which Nagel also holds, that the more we abstract from our subjective perspective on the world, the closer we come to knowing the world as it really is.⁷⁹ This is why Nagel greatly admires physics, a discipline he

⁷⁷ Nagel, 141.

⁷⁸ It has been so prevalent largely because of the work of Michael Smith in his *The Moral Problem* (Oxford: Blackwell, 1994). Smith will figure into our discussion in the next chapter, but only tangentially.

⁷⁹ Actually the story is more complicated than this, because Nagel goes on to say that sometimes individuals' respective subjective standpoints will yield more truth than the objective one. Nonetheless

believes to have accomplished this sort of abstraction from the subjective self better than others.

Is there a leap in Nagel from fact to value? In a sense there is, but I am not certain it is one that falls within the range of Hume's objection. Nagel's 'leap', if it is one, seems to involve the surreptitious justification of a normative principle by way of a non-normative one. The normative principle in question is that subjecting moral reasons to scrutiny from the objective standpoint will yield a conception of reasons that is more *fair* than the alternatives. There are such things as moral facts about *x*, because there are such things as moral reasons to favour, do, or promote *x*. But whether we have these sorts of reasons regarding *x* depends crucially on whether the favouring of *x* is fair to others (e.g. one benefit of this objective 'test' is that it screens out egoists). Now, apparently this concern with fairness is itself justified because it is the ethical equivalent of the scientific model of finding the truth about the world by abstracting from the subjective self. To be sure, the analogy between science and ethics here does seem problematic, because the truth about scientific facts is governed by a correspondence of our beliefs to the world, while the truth about moral facts is governed at least in part by considerations of fairness to others. Nagel's problem of moving from the scientific model to the ethical one reminds us of the problems McDowell faced in moving from claims about secondary qualities to claims about values. But whether there is actually a fact-value leap going on here is less clear, because it is generally accepted today that scientific reasoning itself contains a normative component. If it does, then the move from a scientific model to a moral one seems to be a move from value to value, not from fact to value. So although Nagel's basis of the validity of moral reasons may be problematic, its problems seem not to be captured by the fact-value objection.

Scanlon's account may also escape the fact-value trap that Hume has set. His view is a contractualist one whereby the validity of our reasons is governed by what we can reasonably justify to each other. This account has similarities to Nagel's, but it also has

I think the epistemological principle I have cited is what lies behind Nagel's account of 'objective tolerance.' See Nagel, 130-134.

important differences. One of the most important of these differences is that reasonable grounds for rejecting a principle come from the points of view of distinct individuals, and not from an objective standpoint. We cannot, for example, justify harming one person greatly for the moderate benefit of a great number of others, because we could not in such a case justify ourselves to that one person.⁸⁰ Scanlon proposes several reasons why this account of the justification of reasons is to be preferred over rivals. He thinks that his account helps to explain certain important elements of moral phenomenology, such as why it is that the values of right and wrong have priority over all others, and why it seems to be a particularly serious failing to not care about right and wrong, as opposed to not caring about other things. He also thinks it can account for the complexities of moral motivation, e.g. we (at least sometimes) avoid a wrong action not just because it is wrong, but because other people are counting on us or need our help.

If Scanlon is guilty of making a leap from facts to values in his justification of reasons, his leap is perhaps not a very harmful or implausible one. He does rely ultimately on facts about moral phenomenology in order to explain why we have normative reasons to justify ourselves to each other, and it is true that in section 3.4 we saw the danger of an over-reliance on phenomenological claims. But it is arguable that Scanlon's reliance on phenomenology is not an over-reliance in the same way that McNaughton's is. First, it is not clear that a subjectivist such as Blackburn could account for the priority of right and wrong over other values in the same way that he might account for the negative reaction of an observer to, e.g., seeing children throwing rocks at a wounded animal. Second, phenomenological considerations are not the only ones Scanlon appeals to in his justification of his contractualism. He argues that another advantage of his account is that it addresses an important ethical dilemma, Pritchard's dilemma, in a satisfactory way. Pritchard's dilemma states that we need an account of wrongness that is neither trivial (e.g. 'we have a reason not to do x because it is wrong') nor too far removed from the moral realm (e.g. 'we have a reason

⁸⁰ Nagel does wish to account for the validity of these 'deontological reasons,' but his explanation of them seems less successful. See Nagel, 175-180.

not to do x because we might be caught if we do'). Scanlon's account of wrongness, that we have a reason not to do x because we could not justify our action to others, steers a middle path through the dilemma. This is a reason to favour his account that makes no jump at all from fact to value. So I think the least we can conclude is that the fact-value gap need not be seen to plague irrealist cognitivism in the same way, or to the same extent, as it does accounts of moral realism.

There is an additional problem for at least some conceptions of irrealist cognitivism, which is that it seems to demand a fuller role for rationality to play than is required by realism. We briefly saw in section 3.7 that Railton relies on an instrumental conception of rationality, whereby reason's job, to put it roughly, is to manipulate facts that are already present. Railton claims that in morality we require reason to tell us not what our good is (this is already present in a concept of flourishing) but how best to achieve it. This moderate version of rationality is more easily defended than a robust one (though we have seen that Railton's reliance on flourishing creates problems of its own). By contrast, Nagel needs a robust concept of rationality, because he has nothing like a concept of flourishing to which moral reasoning can refer. He says that we can see from the objective standpoint (and sometimes the subjective one) what is good, but what determines the content of the good? Standpoints alone cannot tell us what we see from them. It appears that, like Kant, Nagel requires reason to tell us both what is good, and also how to achieve that good. This raises the obvious and difficult problem of whether reason can actually take on this extra work.⁸¹

An important advantage of Scanlon's account over Nagel's is that it is able to combine irrealism with a modest, instrumental account of reason.⁸² We reason about the principles we need in order to justify ourselves to each other, but the claim that we *do* need to justify ourselves to each other in this way is a substantive claim, not a rational one. Scanlon emphasises, for example, that someone who believes herself to be exempt from justifying herself to others is not (necessarily) irrational, but she does fail to appreciate the reasons she

⁸¹ For another attempt to explain this sort of irrealist cognitivism featuring a robust concept of reason, see John Skorupski, 'Irrealist Cognitivism' in *Ratio* 12 (1999), 436-459.

has. We feel obligated to justify ourselves to each other partly because this kind of justification fits the moral phenomenology, and partly because it accords with substantive arguments, such as the one concerning the value of each individual life I offered in Chapter 1. I will say more in the next chapter about how Dworkin's account of the sacred can be used to help justify Scanlon's contractualism.

As I mentioned at the beginning of this section, I have not tried to offer anything like a full defence of irrealist cognitivism. I will be satisfied if this section has offered an introduction to some features of the general strategy, and has shown how two prominent examples of the strategy, the views of Scanlon and Nagel, fare against the subjectivist arguments examined in section 3.3. Because irrealist cognitivism does seem able to meet those objections better than the versions of realism we examined, I believe it to be more promising than its realist competitors. But the more difficult task lies ahead, for it is one thing to show an objectivist strategy such as irrealist cognitivism to have promise, and quite another to show in greater detail how it is a thoroughly defensible position.

I conclude that, given the subjectivist arguments we have examined, irrealist cognitivism is the most promising objectivist strategy, and one worthy of further pursuit. We have seen that cognitivism is the crucial issue within objectivism, and that although it might yet be established via realism, current versions of realism are unable to satisfactorily meet one or several of the subjectivist objections we have considered. Keeping in mind the fact that realism does not seem to be the only way to establish cognitivism, we have come to favour irrealist objectivist positions such as Scanlon's and Nagel's. More broadly, this concludes the second phase of the thesis, whereby we have tried to pinpoint with some precision the kind of universal rights view that is needed in order to enjoy credibility. This has been one which bases rights ultimately on objective values, and which understands objective values within a scheme of irrealist cognitivism.

In the following chapter I will offer a detailed defence of a Scanlonian view of irrealist cognitivism. This project will consist largely of defending Scanlon's view against criticisms

⁸² As I note in the next chapter, this is also an important divide between Scanlon and Parfit.

that can be devised against it, though in the process of making this defence I will also suggest important revisions to Scanlon's view. Foremost among these revisions will be an incorporation of Dworkin's account of the sacred as an underpinning to contractualism, and a resultant account of reasons we all share. A fairly comprehensive moral view will emerge from the discussion, which will serve as our framework for a new rights view in the concluding chapter.

Chapter 4

A Scanlonian View of Moral Reasons

We saw in the previous chapter that the most promising sort of moral objectivity generally, and thus the most promising one on which to base universal moral rights, is the kind I labelled *irrealist cognitivism*. This objectivist strategy emphasises the universality of moral reasons while de-emphasising the sort of complex metaphysical commitments made by some other forms of objectivism. This chapter is an attempt to defend a particular theory of moral reasons, namely that of Scanlon. The first section will discuss Scanlon's moral psychology and epistemology, defending his anti-Humean view of motivation and his view that moral reasons exist external to moral agents. The second section will defend Scanlon's contractualism, and by extension his account of right and wrong. The third section will then extend Scanlon's theory to suggest that there are certain goods which we all have reason to pursue (and perhaps promote), and it will suggest what some of those goods are. This will set us up in the fifth and final chapter to show how universal rights follow from these essential goods.

In the context of the thesis as a whole this chapter begins the third and final phase of the project, which is to explain in some detail what my own rights view is. This statement of intent may sound a bit odd in light of the fact that I have said previously looking ahead to this chapter that it does not contain much of an explicit discussion of rights. Indeed this is true: the chapter is an account of what I will call reasons of autonomy and duties, but not rights. Nonetheless, I think it is legitimate to claim that this chapter begins a delineation of my rights view, because the Scanlonian moral picture it defends is the framework into which I will insert rights in the next chapter. I will claim in the next chapter that rights are derived from

reasons that are discussed in this chapter, and it will be impossible to understand or appreciate that discussion without an understanding of the present one.

An interesting interpretative issue will arise throughout this chapter regarding how closely the views I end up defending are representative of Scanlon's own moral picture. One way in which I almost surely do revise Scanlon's contractualism is to make it more determinative, but perhaps correspondingly less flexible in its ability to deal with particular cases.⁸³ Although questions of interpretation are interesting in their own right, I will not emphasise them in what is to follow. I shall confine my speculations about these matters to a few footnotes. Overall, my primary concern is to emerge at the end of this chapter with a view of moral reasons that is persuasive and coherent, whether or not it adheres strictly to an orthodox reading of Scanlon.

4.1 Moral Reasons

This section is a defence of a Scanlonian theory of moral reasons. My discussion will focus particularly on two related issues that have featured prominently in the recent literature on moral reasons, namely what role (if any) desire plays in our recognition of reasons and ability to act on them, and whether and how reasons exist external to moral agents. Scanlon's views are that desires play little if any role in our ability to recognise and act upon moral reasons, and that reasons exist external to moral agents. I will defend both views, though I will suggest that the latter view requires a different defence than the one Scanlon offers in his first chapter, a defence that draws on resources from elsewhere in our project.⁸⁴

Although I will focus on defending Scanlon's account of moral reasons, I have already noted that he is not the only theorist working on a concept of external moral reasons.

⁸³ Scanlon acknowledges that some readers might be tempted in this direction, and he implies that there might be some merit to this approach. See *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), 241-247. All future references to Scanlon will be to this work.

⁸⁴ Scanlon seems to be offering a self-standing epistemology of moral reasons in his first chapter. See Chapter 1, 'Reasons,' 17-77; and especially Section 12, 'How Do We Know What Reasons We Have?', 64-77.

Dancy, Parfit, Smith, and Nagel are perhaps the other most influential figures working on theories of objective moral reasons. There are many debates internal to these irrealist cognitivists that I will not touch upon. My focus on Scanlon over others is a result of my belief that he currently has the most complete account of moral reasons, and that his account is in some ways particularly agreeable to yielding rights, especially universal rights. Scanlon's account has the advantage of being more coherent than Nagel's, and of avoiding the perhaps implausible gyrations involved in Smith's attempt to combine objectivism with Humean motivation.⁸⁵ As for Parfit and Dancy, I think that much of what they say serves to complement Scanlon's account, and I will cite some of their points accordingly.

As I have said, I will focus on Scanlon's concept of *moral* reasons, though he and others often discuss moral and non-moral reasons (sometimes called 'practical reasons') interchangeably. It should be clear enough from my previous chapters, and from what I have indicated will follow in my final chapter, why I am particularly interested in moral reasons as opposed to non-moral ones. Some of what I say about moral reasons will apply equally well to non-moral reasons, though some may not. Since my concern is not primarily with non-moral reasons, I will refrain from pointing out where overlaps occur and where they do not.

Before we discuss Scanlon's view it is best to be clear about our potentially confusing usage of the terms 'internalism' and 'externalism.' There is a sense in which these terms are used to talk about the motivation of agents, and a very different sense in which they are used to talk about the source of reasons. Regarding motivation, a theorist is often considered an internalist if he thinks that agent A can act on his reason to ϕ without a desire playing a causal role in this action. Conversely, an externalist on the issue of motivation would insist that a desire must be a part of the motivational story. I will follow Parfit in labelling these positions 'moral belief internalism' and 'moral belief externalism', respectively.⁸⁶ Regarding the source of reasons, an internalist holds that reasons originate from an agent's subjective motivational

⁸⁵ The kind of view to which Nagel is committed has been usefully criticised by Dancy in *Practical Reality*, 50-51. Smith's view has been criticised by many commentators.

⁸⁶ Parfit, 'Reasons and Motivation', 104-105. It might be somewhat misleading to label Scanlon's own position 'moral belief internalism,' because he thinks beliefs are only one of several kinds of

set, while an externalist holds that (at least some) reasons apply to an agent whether or not they correlate with his subjective motivational set. Following Parfit again I will call these positions ‘moral internalism’ and ‘moral externalism’. Clearly, it is possible for a theorist to be an internalist in one sense and an externalist in the other – for example, Scanlon is himself a moral belief internalist but a moral externalist.

The briefest overview of Scanlon’s treatment of moral reasons might summarise it in the following points:

1. Reasons are primitive. They are not derived from desires, or from beliefs, or from anything else.
2. Reasons necessarily have a normative element: a reason is a good reason.
3. It is possible for an agent to be rational, yet fail to appreciate the reasons that apply to her.
4. Reasons present us with no special metaphysical mysteries.
5. Desire plays almost no role in an agent’s recognition of most reasons, nor in his motivation to act on them. Attitudes of the agent do play an important role in these processes, but these attitudes are judgement-sensitive.
6. Reasons exist external to the agent. They may apply to an agent even though she does not (perhaps even cannot) recognise or appreciate them.
7. We find out what reasons we have by thinking about them. Our judgement-sensitive attitudes give us operative reasons, which then must survive two steps of critical scrutiny. Operative reasons that survive the first step are pro tanto reasons; pro tanto reasons that survive the second step are genuine reasons.

As I have already indicated, the bulk of my discussion will focus on the last three points. I have already tried to defend the fourth point in 3.7. It would perhaps be useful, though, to say a bit more about the first three points, if only to explain why I have chosen not to examine them at greater length. The claim that reasons are primitive is one of the most distinctive, and perhaps surprising, claims that Scanlon makes. Reasons have been traditionally seen to be reducible to beliefs, or perhaps a combination of beliefs and desires. Scanlon thinks we must make do with the (admittedly circular) definition that a reason is a consideration that counts

judgement-sensitive attitudes that can motivate us. This label does, though, imply the crucial point that

in favour of something, and counts in favour of that thing by providing a reason for it. But this circularity is hardly surprising, because if a concept is primitive it is analytically true that that concept cannot be explained in terms of anything else. Why can reasons not be primitive? The most likely source of scepticism will probably take the form of metaphysical doubts about reasons, and I have tried to defend Scanlon on this point in the previous chapter. But since it is difficult to offer positive arguments in favour of reasons being primitive⁸⁷, the best way to proceed is probably to admit the possibility that they are primitive, and then see if this claim can be part of an overall account of reasons that is coherent and plausible. I hope my discussion in this section will show that it can be.

When Scanlon claims that reasons are good reasons, he is distancing himself from a distinction that is often made between two kinds of reasons. This distinction, which we will see from Smith later, differentiates between motivating (or explanatory) reasons on the one hand, and normative (or justifying) reasons on the other. Motivating reasons are claimed to be those that move us to act, while normative reasons are those that morality indicates we have. But it is a substantive controversy whether such a distinction need be made. The Scanlon view is that reasons are normative, and that a person of non-defective faculties⁸⁸ can recognise the reasons that apply to him, and will exhibit the rationality to act on the reasons he recognises. There is no need on this picture to distinguish between motivating reasons and normative reasons. If Scanlon's view of motivation is correct (or at least not clearly incorrect), then it seems there is probably no need to distinguish between motivating and normative reasons, and there is no obstacle to claiming that all reasons are normative. On the other hand, if a Humean view of motivation like Smith's is true, then it might be helpful to make a distinction between different kinds of reasons, so I will delay further comment until we examine that issue.

desire need not be one of those attitudes, so I will retain it despite its slight imprecision.

⁸⁷ Though Dancy offers helpful negative arguments. He argues that reasons cannot be based on beliefs, nor on desires. One might infer from these arguments that reasons must be primitive. See *Practical Reality*, Chapters 2-3.

⁸⁸ Scanlon is not entirely clear on what will count as a defect in this context. He does say that one kind of defect occurs when our desires mislead us: we may have desires that arise unbidden and run contrary to the attitudes that would help us to recognise our reasons. See p. 40.

Scanlon's view of rationality is wide in the sense that he thinks it is possible for an agent to be rational, yet fail to appreciate the reasons that apply to her. Agents are irrational only when their attitudes fail to correspond to their judgements about reasons. Thus (applying Scanlon's view to an example from Parfit) I am being irrational if I think I have a reason to care about my well-being on future Tuesdays but fail to care about it on those occasions anyway; but I am not being irrational if I (mistakenly) believe that I do not have any reasons to care about my welfare on future Tuesdays.⁸⁹ Scanlon's wide view thus conceives of rationality as instrumental, not substantive. If I have a reason to keep my promise, this does not entail that I am irrational if I fail to keep it – rather, I am merely failing to appreciate a reason that applies to me. This discussion is worth mentioning for two reasons. First, it explains the view of rationality I will myself adopt. Second, we can note that Scanlon's instrumental view of rationality sets up a challenge for him (and for us): to give objective moral reasons a determinate content without appealing to what it is rational to value. I will begin to show how he proposes to do this in the discussion that follows.

Before I offer a defence of Scanlon's moral psychology and epistemology, it seems worthwhile to provide an overview of what the process of moral reasoning entails. I will try to describe, first in general terms and then in examples, how we come to recognise and act upon moral reasons, according to Scanlon's discussion in his first chapter. In doing so I am offering a fuller explanation of points five through seven, discussing them together to show how they are linked. The present discussion, though, is an attempt only to clarify Scanlon's position, not yet to defend it. Reasons first arise in a provisional sense from an agent's judgement-sensitive attitudes, possibly combined with a state of affairs.⁹⁰ Our judgement-sensitive attitudes include beliefs, intentions, hopes, fears, and attitudes such as admiration, respect, contempt, and indignation. Significantly, they do not, or at least do not usually,

⁸⁹ Parfit disagrees, preferring a relatively narrow view of rationality (X's failure to appreciate she has a reason to ϕ can allow us to call X irrational) with corresponding substantive implications (X's appreciation of the fact that she has a reason to ϕ makes her substantively rational). I will not pursue this controversy further, other than to suggest that Scanlon has convincing examples to support his view. See Scanlon, 25-30.

include desires. P may have an attitude A that suggests he has a reason to ϕ , a reason that in turn supports A. In such a case P has an *operative reason* to ϕ . This operative reason must then undergo two steps of critical scrutiny in order to become a genuine reason. In the first step, we determine whether P's operative reason can survive questioning along the lines of 'Am I overlooking something? Am I considering the object or facts in question in the right way? What reasons do particular cases seem to present?' and so on. The content of judgement-sensitive attitude A will help to give more specific content to this line of questioning. If after our questioning we still think that P has a reason to ϕ , then this reason becomes a *pro tanto reason*⁹¹, and we gain confidence in the legitimacy of attitude A. We then engage in a second step of critical scrutiny in order to compare our pro tanto reason to ϕ to any other pro tanto reasons that might count against ϕ -ing. Sometimes there will be different pro tanto reasons that clash in this way, and sometimes there will not be. When there are, we must weigh them against each other to see whether we do actually have a reason to ϕ .⁹² If it still seems at this point that we have a reason to ϕ , then at last we have a genuine reason. Our realisation that we have a genuine reason to ϕ gives us an intention to act on our reason (i.e. an intention to ϕ). This intention is normally sufficient to cause us to ϕ when we judge that circumstances are amenable to doing so.

It may be difficult to fully picture what is going on in the Scanlon account when we discuss it in such general terms, so let us see how it works in a couple of examples. The first example, that of a parent's alleged reason to strike an unruly child, comes from Scanlon himself. Let us say a parent has a judgement-sensitive attitude in favour of striking his child because the child has been terribly incorrigible, and thus considers himself to have an operative reason to strike the child. How might he determine whether this operative reason is

⁹⁰ For example, my attitude in favour of eating ice cream may by itself make me think I have a reason to eat ice cream. Or this attitude may be 'latent': I may need to see an ice cream truck go by before I pay attention to my attitude in favour of eating ice cream.

⁹¹ Scanlon does not himself emphasise the terminology of operative reasons and pro tanto reasons, but on two separate occasions he does use this terminology in the way I am using it. See 19, 65.

⁹² What will be the weighing criteria? Scanlon does not have much to say about this. I presume he thinks we would ask the same sort of questions of our pro tanto reasons that we asked of our operative reason.

a *pro tanto* reason? By asking himself questions such as why he thinks violence is appropriate, why he thinks the answer to that question is something desirable, and what alternative courses of action there might be. By engaging in this sort of scrutiny, it seems likely that the parent will decide he does not have the reason in question (i.e. it is not even a *pro tanto* reason), and will accordingly revise the judgement-sensitive attitude on which it is based (this is an example of the way in which our attitudes are 'judgement-sensitive'). He will not form an intention to strike his child.

We can easily devise a second example which brings the second level of scrutiny into play. Let us say I have a judgement-sensitive attitude in favour of helping those in need, and I hear of a charity program which is helping families in rural Kenya to obtain clean drinking water which they would otherwise lack. I can spare some money to give to this cause without causing hardship to myself. I thus consider myself to have an operative reason to contribute money to the charity. This operative reason seems to survive the first level of scrutiny, as the money does help the poor Kenyans, it is no great sacrifice to me, etc. But let us say I also know that although some of the charity money goes toward helping the poor people, some of it ends up in the pockets of the autocratic and corrupt leaders of the country, helping them to perpetuate their rule. Since the policies of these leaders are largely what is keeping the rural population poor and unhealthy, it seems I have *pro tanto* reasons both to give the money and not to give the money. If I weigh these reasons and decide I do not have a reason to give the money, I need not change the judgement-sensitive attitude on which my original operative reason was based, for that reason survived the first level of scrutiny. If a comparison of *pro tanto* reasons reveals that I *do* have a reason to give the money, I will then form an intention to give the money, which will be sufficient to motivate me to do so when circumstances permit.

I should issue a reminder at this point that I have so far only been trying to explain Scanlon's view of moral reasons, not defend it. I trust that the basic tenets of his position have been made clear, and that we can now examine how the position holds up against counter-arguments and rival theories that some have found persuasive. I will first offer a defence of Scanlon's view that desire plays little or no role in the recognition of reasons and our ability to

act on them, comparing the Scanlon view to Humean ones such as Smith's. Then I will offer a defence of Scanlon's externalist view of the source of moral reasons against the influential internalist arguments of Bernard Williams.⁹³ To put the matter in Parfit's terms, I am first defending Scanlon's moral belief internalism, and then his moral externalism.

The debate between moral belief internalists and externalists is considered to be of great importance in discussions of moral reasons, because it is often thought that if we are to be *externalists* about the source of moral reasons (and thus objectivists) we must establish the truth of moral belief *internalism*. For example, it strikes many people as mysterious how reasons could exist external to an agent, yet depend on that agent's particular desires.⁹⁴ The two poles in the debate are traditionally seen to have been defined by the positions of Hume and Kant. Hume is often associated with the view that we cannot ϕ without being motivated by a desire to ϕ , while Kant is associated with the view that it is (at least sometimes) possible to ϕ when motivated by moral belief alone. It is important to note, then, that the candidates for motivational elements have traditionally been seen to be either belief, desire, or a combination of the two. This belief-desire paradigm has been accepted by most moral belief internalists (e.g. Nagel, McDowell, Parfit) and moral belief externalists (e.g. Williams, Blackburn, Smith) to the present day. I will argue that although Scanlon's transcendence of the belief-desire paradigm makes him immune from important criticisms of moral belief internalism, we nonetheless lack very effective arguments at present against moral belief externalism. The result is a sort of draw between the two sides, but this result is far from useless for our purposes. It allows us present Scanlon's view as defeasibly sound, and to call into question the assumption currently held by some thinkers that one must be either a moral internalist, or else accomplish moral externalism via moral belief externalism in the way that

⁹³ Bernard Williams, 'Internal and External Reasons' in *Moral Luck* (Cambridge: Cambridge University Press, 1981), 101-113; 'Internal Reasons and the Obscurity of Blame' in *Making Sense of Humanity* (Cambridge: Cambridge University Press, 1995), 35-45. All references will be to the first essay unless otherwise noted.

⁹⁴ This is not mysterious to Smith, of course, but it remains mysterious to many others. In this discussion I will be considering only Smith's Humeanism, not his attempt to reconcile Humeanism with objectivism.

Michael Smith attempts. The argument is encouraging to anyone who, like Scanlon, wishes to combine moral belief internalism with moral externalism.

Let us see how Scanlon's account handles a recent argument for Humean motivation, namely that of Smith. Smith's argument can be summarised as follows:

- P1: Having a motivating reason is, *inter alia*, having a goal.
- P2: Having a goal is being in a state with which the world must fit.
- P3: Being in a state with which the world must fit is desiring.
- C: Desires are constitutive elements of motivating reasons.

Now, as I have mentioned, Smith distinguishes between motivating and normative reasons, while Scanlon does not. But this difference need not detain us long, for it seems that Smith's motivating reasons are for present purposes akin to Scanlon's operative reasons. Thus we might put P1 in these more Scanlonian terms:

- P1: Having an operative reason is, *inter alia*, having a goal.

With this clarification in mind, what do we think of the argument? I doubt Scanlon would object to either of the first two premises. If I have an operative reason to give money to rural Kenyans, this seems rather straightforwardly to be a goal (though of course one which has yet to be 'approved'). Furthermore, to have this goal is to be in a state with which the world must fit, in the sense that my goal will not be realised until states of affairs are arranged in a certain fashion. But if Scanlon would allow the first two premises, he would certainly object to the third. Smith realises the third premise is the most controversial, and he tries to defend it against various attacks made within the belief-desire paradigm. What Smith does not protect himself against, though, is the possibility of an alternative picture of motivation that takes leave of the strict belief-desire paradigm, which is what Scanlon offers. As we have seen, Scanlon believes that judgement-sensitive attitudes include not only beliefs but hopes, fears, intentions, etc. The key point about these attitudes in the present context is that they are not all reducible to talk about beliefs and desires, e.g. it is not the case that a hope is not merely a certain combination of beliefs and desires, while a fear is a different one. Hopes and fears are

fundamentally different *kinds* of attitudes than beliefs and desires (though they are similar to beliefs in the respect that they are judgement-sensitive). If this claim is difficult to demonstrate conclusively, it is also difficult to refute. The mere fact that hoping may seem to be similar in some respects to desiring does not mean it is necessarily *composed* of desires. The same can be said for the other candidates for judgement-sensitive attitudes. As a result, it seems that Scanlon does not face any conceptual impediment to denying P3 and claiming that attitudes other than desire can put us in a state with which the world must fit.

But is Scanlon's conceptual alternative to the Humean picture phenomenologically plausible? The burden is on him to present a theory of motivation that is not only coherent but which seems to accurately describe our experiences. Let us test its phenomenological plausibility by comparing it to the Humean account with regard to an example that many would take to be one that lends itself to the Humean view. Let us say that on a hot day I pass by a water fountain and take myself to have a reason to drink. On the Humean view it is of course my desire to drink (along with a belief that drinking will satisfy this desire) that motivates me to drink. On the Scanlon account, I am motivated by a judgement-sensitive attitude, namely the belief that drinking the water will lead to the pleasant state of having my thirst satisfied. Which account is more phenomenologically accurate? This seems hard to say. In the case of giving to charity, Smith would claim that I do so because I have a desire to help the rural Kenyans (along with a relevant means-end belief), while Scanlon might say that I am motivated by my *hope* that the lives of these people will improve as a result. Which account does the phenomenology favour? Again this seems difficult to determine. But if the phenomenology does not count decisively in favour of Scanlon, it seems not to form the basis of a convincing argument against him either.

So far our moves against the Humean have been defensive in nature. I have tried to argue that Scanlon is not harmed by appeals to direction of fit or by appeals to phenomenology. But if we shift from defence to attack, what can be said to discredit the Humean picture? Many different kinds of arguments have of course been attempted. It is sometimes thought that one of the more successful of these has been that of the early Nagel,

who made the quite plausible claim that many of our desires result from our deliberations about the reasons we have (and are in this sense 'motivated').⁹⁵ Some have taken this to imply that desires generally are unlikely to be motivationally efficacious. While Nagel himself thought (or at least hoped) this conclusion to be true, he realised it did not follow simply from his claim about motivated reasons, for that claim by itself allows for the possibility that (unmotivated) desires motivate our reasoning. Nagel's account, then, shows the anti-Humean a clear way to attack Humeanism, if only the gap he leaves can be bridged. How can we get from the claim that many of our desires result from reasons we take ourselves to have, to the claim that our reasons are (at least sometimes) not motivated by desires? A recent attempt to bridge this gap has been made by Dancy.⁹⁶ His argument goes like this:

- P1: Many and various desires are immediately grounded not in other desires but in reasons.
- P2: The only desires not grounded in reasons are pathological urges.
- P3: These urges cannot themselves count as reasons for doing what they move us to do.
- P4: For all reason-based desires to ϕ , the desires do not themselves add to those reasons, nor do they add to reasons to do what would subserve ϕ -ing.
- C: No desires are reasons, and no desires add anything significant to our stock of reasons.

We can see that Dancy's strategy is to marginalise unmotivated desires to the greatest extent possible, then argue that motivated desires contribute nothing important to the reasons on which they are based. The structure of the argument seems promising, but I think Dancy is less than fully successful in justifying either one of these two steps. Since the argument becomes suspect if just one of the two steps is not successful, I will confine my discussion to Dancy's attempt to marginalise unmotivated desires. How does he manage to reduce unmotivated desires to pathological urges? P2 depends on the claim that, if we can rationally explain why we desire to ϕ , our desire must be had for the reason that our explanation reveals, i.e. it must be motivated. From there, Dancy needs only to show that blind urges are

⁹⁵ Thomas Nagel, *The Possibility of Altruism* (Princeton: Princeton University Press, 1970), Chapter 5.

the only desires that do not fit this description⁹⁷, which he arguably does. But the mere fact that a reason can be found for a desire does not make that desire motivated. It simply begs the question to assume that every desire for which we can devise a reason must be based on that reason. We can see this if we return to an example we used previously. We have seen that at least two coherent and plausible, though irreconcilable, explanations exist for what happens when I pass a water fountain on a hot day, have an attitude in favour of drinking, and drink the water. The Humean one is that I have a desire to drink the water, and this is what motivates me to do so. Scanlon's alternative is that I drink the water because I believe that doing so will give me a pleasurable sensation of having my thirst quenched, and that this belief gives me a reason (at least an operative one) to drink the water. To this we might add another anti-Humean account, that of Nagel, who thinks that my belief that the water will be pleasurable gives me a desire to drink the water, but that this desire is not motivationally efficacious. The question we must ask ourselves at this point is how Dancy's argument can give us any reason to prefer either anti-Humean view to the Humean one. I cannot see that anything Dancy has said excludes the possibility that in this instance I have an unmotivated desire to drink the water, and that this is what moves me to drink it. It could be the satisfaction of just such an unmotivated desire that makes our drinking pleasurable.

Though we have not by any means examined all the arguments against Humeanism, I am pessimistic about our chances, at least within the current terms of the debate about motivation, of finding a decisive reason to favour either Humeanism or anti-Humeanism. The problem, stated in general terms, is that Humeans and anti-Humeans carve up the same phenomenological material in ways that are coherent and of roughly equal plausibility, and that any argument one side makes against the other depends on a particular way of carving the material the other would simply reject. We have seen examples of this phenomenon already; another can be seen in the different ways that desires and dispositions are or are not carved apart. Scanlon's task of excluding desires from judgement-sensitive attitudes is made

⁹⁶ *Practical Reality*, 35-39.

⁹⁷ It is the fact that we lack reasons for these urges that makes them pathological.

easier by the fact that he whittles desires down to the sort of urges discussed by Dancy above. This allows him to say that judgement-sensitive attitudes do not normally include desires, and instead are composed of various dispositions. Smith, on the other hand, takes a much wider view of desires as states that have a certain functional role. To desire to ϕ is, for Smith, to have a certain set of dispositions regarding ϕ -ing. Must dispositions be considered desires? I cannot see how this question can be resolved by philosophical argument.

Fortunately, though, this impasse concerning Humean motivation affects Scanlon's account less than we might have imagined. First, it allows Scanlon's moral reasons to be at worst defeasibly legitimate. There seems no reason concerning moral motivation to doubt their legitimacy at present, even though we must admit we have not beaten back the Humean challenge as much as we might like. Second, even if new and convincing arguments for Humeanism are devised, it is possible that Scanlon's account would not be harmed. To see this, let us take Scanlon's motivational picture and insert desire in every place a Humean might want it. We might end up with the following picture: we have judgement-sensitive *desires* which give us operative reasons. We then subject these reasons to our two levels of critical scrutiny. When a reason passes both levels, we form a *desire* to act on it, which is normally sufficient for us to so act. I cannot see that the moral externalism of Scanlon's account is threatened by this interjection of desires into the picture, which would still include elements such as the judgement-sensitivity of desires, and the critical scrutiny of reasons. But if these are indeed important elements, they indicate how the Scanlon account might be harmed. One way would be to say that not only are we motivated by desires, but that these desires are not judgement-sensitive. But it is not clear, at least *prima facie*, why desires, or at least a large class of them, could not be judgement-sensitive. The other way is to claim that Scanlon's account of the critical scrutiny of reasons does not accomplish what it needs to, failing to give us a determinate account of the reasons we have. As I will argue in the pages to come, I think there might be something in this criticism. But the important point at present is that it is a separate issue from the problems presented by Humean motivation.

I have argued that, although I cannot see how the Humean account of motivation can be refuted, Scanlon is nonetheless unharmed by it. His motivational account seems to me to be just as plausible as the Humean one, which confers on his moral reasons a defeasible legitimacy. Furthermore, even if Humeanism is true it is not clearly a threat to the crucial elements of Scanlon's external reasons. Despite the impasse we have reached, the discussion of moral motivation has been important to our defence of Scanlon. Humeanism has become a sort of dogma in modern philosophy, suggesting to many that we must choose between either a subjectivist ethics that admits the arbitrariness of individual desires, or an objectivism that proceeds along Smithian lines. I hope I have shown that there is no reason in the current state of the debate to feel we are forced into making such a choice.

The second main line of defence of Scanlon's account I wish to pursue involves his moral externalism. As we will recall, this is the view that an agent can have moral reasons that are not suggested by his subjective motivational set – moral reasons are in this sense external to the agent. The opposing view is of course moral internalism. Williams, the most influential of the moral internalists, is happy to speak of moral reasons, but is puzzled by the idea that such reasons could be somehow external to moral agents. How can an agent, he wonders, have a reason to ϕ that she cannot recognise? If she has a reason to ϕ , this must be because she has in some sense a motivation to ϕ .⁹⁸ Accordingly he decides that external reasons are incoherent, false, or something else badly expressed. I will try to defend Scanlon's concept of external reasons against Williams's arguments.

One reason the Williams account has been influential is that it avoids the charge of over-simplicity which could easily plague accounts of moral internalism. It is not the case, for example, that P has a reason to ϕ whenever P desires to ϕ . Williams does think that we have a reason to ϕ whenever we *truly* have a motivation to ϕ , but that we are often mistaken about how best to fulfil our true, fundamental motivations. Thus it is possible for us to think we have a reason to ϕ when we actually do not, and it is possible that in particular cases we may

not realise it when we actually have a reason to ϕ . To see if we really have such a reason we must deliberate about the relationship between our immediate inclinations and our fundamental motivations, and the deliberative process Williams envisions seems surprisingly similar to the one Scanlon suggests at his first level of critical scrutiny.⁹⁹ In this way Williams tries to account for all the complexity of a moral externalist account while avoiding what he regards as the mystery. At the very least, his account has a plausibility which makes it worth taking seriously as an alternative to moral externalism.

I can discern two distinct but related arguments that Williams makes against external reasons. I will call the first the argument concerning explanation, and it can be summarised as follows:

- P1: If something can be a reason for action, then it could be someone's reason for acting on a particular occasion, and it would then figure in an explanation of that action.
- P2: No external reason statement could by itself offer an explanation of anyone's action.
- C: External reason statements cannot be reasons for action.

Scanlon would object to the first premise only in the sense that he thinks it applies only to agents who are relevantly non-defective. He thinks it is possible an agent might have a reason that applies to her that she cannot recognise, but only if that agent is deficient in her ability to scrutinise her reasons. While this is an important difference between Williams and Scanlon, it is not the basis for a telling objection to the argument. Scanlon's more serious objection would be to P2. Strictly speaking, Scanlon could admit that P2 is true, but that in the sense that it is true, Williams's conclusion would not follow from it. For if we are to be precise, it is certainly true that no external reason statement could 'by itself' offer an explanation of anyone's action. A full explanation of an agent's action involves reference to judgement-sensitive attitudes, deliberation about the external reason statement, and the forming of an intention. But to be fair, Williams seems to have a more substantive point in

⁹⁸ Note that for moral internalists this motivation need not include desire. Williams does hold to a Humean view of motivation, but his arguments concerning moral internalism do not depend on his doing so.

⁹⁹ So much so, in fact, that Scanlon is content to call them identical. See 'Appendix: Williams on Internal and External Reasons' in *What We Owe to Each Other*, 368.

mind in P2. He is concerned to emphasise that a psychological link is needed for an agent on an external reason statement, and that it is mysterious where this link is going to come from. But I think this is a problem that Scanlon has transcended by rethinking the old belief-desire paradigm. Perhaps if Scanlon were stuck with a picture that claimed we are always motivated in morality by belief alone, the Williams claim about the need for a psychological link would have more bite (e.g. for reasons brought out by Smith's argument above). But clearly the psychological link in question is provided on Scanlon's account by the notion of an intention. Following Michael Bratman, Scanlon conceives of an intention as a sort of defeasible plan, a plan whose motivating power derives from the judgement and reasons an agent recognises, not from a desire.¹⁰⁰ As we have seen, Scanlon claims that P's recognition that she has a genuine reason to ϕ normally gives her an intention to ϕ , which is normally sufficient to lead her to ϕ .

If there is any reason to doubt Scanlon's account of the sort of psychological link Williams seeks, it probably concerns whether the Scanlon picture can account for the phenomenon of akrasia. It seems empirically true that we sometimes recognise that we have a reason to ϕ , yet fail to be moved to act on this reason. We might wonder if Scanlon's attempt at explaining a psychological link between our recognition of a reason and our acting on it has drawn the connection too closely, and cannot account for akrasia. But Scanlon does include conditionals in his account of intentions: P's recognition that she has a genuine reason to ϕ *normally* gives her an intention to ϕ , which is *normally* sufficient to cause her to ϕ . Abnormal cases will sometimes arise in which we recognise we have a reason to ϕ but fail to focus on it properly. To take an example from Scanlon, I may realise I have a reason to ignore what a certain group of people think of me, yet find myself anxious to please them anyway. In such a case my anxiousness to please this group stems from a failure to focus on the reason I have, and this failure is a result of the malfunction of my rational capacities. Humeans would of course suggest that what is happening instead is that my belief that I should ignore

¹⁰⁰ Michael Bratman, *Intention, Plans, and Practical Reason* (Cambridge, MA: Harvard University Press, 1987).

the opinion of this group is being overmastered by a desire to please them. But as with other motivational phenomena we have examined, it seems to me that Scanlon's account is phenomenologically at least as plausible as the Humean one. So I think Williams's first argument gives Scanlon little to worry about.

I will call Williams's second argument the argument concerning coming to believe. It can be summarised (perhaps somewhat inelegantly) as follows:

- P1: Upon believing an external reason statement, an agent will be motivated to act.
- P2: If external reasons are to be distinguished from internal ones, the motivation (from P1) will have to be a new one that we come to have upon believing the truth of an external reason statement.
- P3: The process by which we acquire this new motivation involves correct deliberation.
- P4: In order to deliberate we must do so from an original motivation.
- P5: The external reasons statement will have to be taken as roughly equivalent to, or at least as entailing, the claim that if the agent rationally deliberated, then, whatever motivations she originally had, she would come to be motivated to ϕ .
- P6: Regarding the external reasons statement, there will be no original motivation for the agent to deliberate from, in order to reach the new motivation.
- C: All external reasons statements are false.

Whereas Williams's first argument focused on an issue addressed by Scanlon's concept of intention, this argument concentrates on an issue that Scanlon tries to address with his account of the critical scrutiny of reasons. It is Williams's view that, in order to be justified in calling something a reason, an agent must, at least in principle, be able to reach it from her subjective motivational set. To call any other reason-statement a genuine reason is simply to lapse into falsehood or incoherence.

Williams's second argument is a formidable challenge for the moral externalist, and we must see if a successful reply to it can be found within a Scanlonian context. In order to better see why an externalist reply is important, though, I shall offer some suggestions for why we should consider Williams's moral internalism to be unattractive at best. Williams seems on his own view to be committed to an unhappy dilemma, one horn of which is less than coherent, and the other of which is just ugly. He claims that, although we cannot say

that others have reasons to do things that are alien to their subjective motivational sets, we can nonetheless legitimately employ words of normative censure against them, calling them selfish, brutal, cruel, etc. Surprisingly, Williams seems to think that our usage of these words can describe the agent or the act in question, not just our personal feelings about the agent or the act.¹⁰¹ But, given other claims Williams makes about reasons and motivational alienation, it is mysterious how this could be. How could it be the case that Hitler had no reason to put an end to the Holocaust, yet was cruel to let it continue? How is it that a Taliban member has no reason to allow women to be educated, yet is sexist and perhaps even brutal to repress them in this way? This curious juxtaposition of claims about reasons and normative terms points to two curiosities about the Williams account. First, it leads us to wonder how words like 'brutal' and 'selfish' (and for that matter 'kind' and 'generous') are to be explained if not in terms of reasons. If they are to be explained differently, then how is this other realm of morality related to his discussion of reasons? Second, it makes us wonder why he expends so much effort trying to make plausible and coherent an account of internal reasons that he considers not only psychologically realistic but also fully normative, if it turns out that so much of normativity must be explained outside the realm of reasons. On this first horn of the dilemma, then, the coherence of Williams's account is threatened.

There is a way that Williams might salvage coherence, but perhaps only at the price of further reducing the appeal of his account. This would be to admit that his usage of normative terms like 'cruel' or 'generous' is non-descriptive, and to accept the relativist consequences. Thus I might call Hitler cruel because his actions were contrary to those that would be suggested by my own motivational set, while admitting that he himself had no reason to act differently. Now, as I have mentioned, this tepid usage of moral terms seems not to be what Williams envisions, but even if it were, there would be a serious problem with this move. It seems that my usage of 'cruel' to describe Hitler in this context would simply reflect a misunderstanding of the moral theory I am purporting to respect. If I truly believe

¹⁰¹ I take Williams to be saying this because he presents these normative terms as an alternative to an externalist view of reasons, claiming that externalism would add nothing that is not already captured in

that each person has a reason to do only what his motivational set suggests, then why do I think Hitler cruel at all? Surely it is irrelevant that Hitler did something that I myself would not do. I am making a mistake by expressing moral disapproval of any sort, even if I understand that disapproval to be of a non-descriptive variety. Williams might want to say that my own belief that Hitler was cruel suggests that I think that Hitler should have the same belief, but what he has not accounted for is any reason that Hitler would have to care about my opinion of the matter. The second horn of the Williams dilemma, then, presents us with a picture whereby we could criticise others only for failing to fulfil their motivational sets (and the same would apply to our criticism of ourselves). While this is more coherent than the view of the first horn, I hope I have said enough in my discussion of Dworkin's account of the sacred in Chapter 1 to call this sort of view into question. Any view which suggests Hitler might have been on a moral par with Mother Teresa (because they both fulfilled their motivational sets to a roughly equal degree) is surely so counter-intuitive as to be a last resort.

But if Williams's view is unappealing, how do we address his second argument against moral externalism? Given the content of the argument concerning coming to believe, I think Scanlon could effectively defend his account by demonstrating one of the following: 1.) The existence of a given moral reason does not depend on the necessity of a (non-defective) agent to whom the reason applies being able, even in principle, to recognise that she has that moral reason; 2.) It is possible, at least in principle, that every (non-defective) agent can recognise all the moral reasons that apply to him, even if some of these reasons are not in any way suggested by that agent's subjective motivational set. I will argue that (1) is not a plausible option, and that although Scanlon tries to demonstrate (2), his attempt seems less than fully satisfactory. I will then suggest that other resources exist in *What We Owe to Each Other* which make a defence of (2) more promising.

I think (and Scanlon seems to agree) that there is a danger for moral externalists in talking of reasons that are *too* external. For example, what would be the use of talking of the

our usage of these words. This would surely be an implausible claim if he took these terms to be used only in a non-descriptive way. See 'Internal Reasons and the Obscurity of Blame,' 39-40.

existence of a moral reason that no one can ever recognise? But if this would be pointless, then it would also seem useless to speak of a genuine reason had by P that P could not, even in principle, recognise. Morality features an essential practicality that distinguishes it from, e.g., scientific inquiry, and this practicality suggests that moral reasons possessed by P must in principle be able to be recognised by P. Scanlon's discussion of his first level of critical scrutiny suggests that he agrees. The implication of that discussion is that anyone of non-defective rational capacities can engage in the sort of questioning that reveals what reasons he has. And although Scanlon's discussion of the second level of scrutiny is more brief, I think that we can again assume that he feels that anyone of adequate rational capacities is capable of weighing competing pro tanto reasons and coming to a conclusion about them. So I think that option (1) is not very promising.

Option (2) is the one Scanlon favours. He thinks that, whatever subjective motivational set (i.e. set of judgement-sensitive attitudes) agents begin with, they can realise they have a reason to ϕ by engaging in the critical scrutiny of reasons. For example, P may initially have a set of judgement-sensitive attitudes that does not lead him to think about ϕ -ing at all. Instead he has a judgement-sensitive attitude in favour of ψ -ing and so considers whether he has a reason to do that. It is Scanlon's hope that, if P does have a reason to ϕ , he will realise it in the course of his deliberations about ψ -ing (or about other reasons), aided by the refinement of his judgement-sensitive attitudes that corresponds with those deliberations. Thus Hitler may have begun in a state of motivational alienation (in the full Williams sense) from the act of ending the Holocaust, but could (if he was relevantly non-defective) have come to have the right motivation through a series of deliberations about other reasons he took himself to have, and through the corresponding adjustments of his judgement-sensitive attitudes.

This is how the Scanlon account works in theory. But is it really true that an agent who is radically alienated in his present motivations from ϕ -ing can be brought to recognise that he has a reason to ϕ ? I wish to suggest that there is reason to doubt that Scanlon has said

enough in his account of reasons to explain such radical conversions.¹⁰² I will focus on his treatment of the first level of critical scrutiny, which he explains in greater detail than the second. I will see how this process of scrutiny works in the context of an example that is appropriate for my overall thesis topic of universal rights, namely the treatment of women by the Taliban regime in Afghanistan.¹⁰³ It is well-known that the Taliban systematically deny women in their country most of the advantages they accord to men, one of them being the opportunity for education. Furthermore it seems safe to assume that many Taliban members are motivationally alienated (in a full sense) from allowing women to be educated. Can Scanlon's account of the first level of moral scrutiny explain how such a hardened (but rational) Taliban member (let's call him T) can come to realise he has a reason to allow women to be educated (which we will unimaginatively call a reason to ϕ)?

At the first level of scrutiny T would ask himself the following general questions:

1. Am I overlooking something, perhaps because I am not considering the fact or objects in question in the right way?
2. What kinds of reasons might there be for ϕ -ing apart from any I have already considered?
3. What reasons do particular cases seem to present?
4. What are other cases on which ϕ -ing would have a bearing if it were a good reason? Is it a reason in those cases? Are our reactions consistent in those cases? Might our reactions admit of alternative explanations?¹⁰⁴

A more specific line of inquiry in this case that retains the spirit of those general questions might go something like this: Why do I think education is valuable for men? Why do I think women are relevantly different? Is this a reason for thinking that they should not be educated? Why or why not? And so on. Scanlon envisions T going through this sort of questioning not just about whether he has a reason to ϕ , but also about the background judgements on which his initial answer depends. Scanlon's hope is that by questioning layers

¹⁰² Scanlon seems to concede this fact in his appendix on Williams, implying that the moral internalist and externalist are at an impasse.

¹⁰³ This chapter was written while the Taliban were still in power. It still works as a hypothetical example, and may yet apply to stray Taliban members who are hiding in caves.

¹⁰⁴ For Scanlon's discussion of this process, see 64-68.

of background judgements, T will eventually find common ground with those who think he has a reason to ϕ , and will thus come to share their opinion that he has this reason.

Now, it seems true that we can question our operative reasons, and the background assumptions we hold, in just this way. Less convincing, though, is the claim that a motivationally-alienated agent like T will, by this process, come to think he has a reason to ϕ . It seems to be entirely possible that T could examine his background judgements all the way down and still think he has no reason to respect women as he respects men.¹⁰⁵ We must keep in mind that Scanlon's view of rationality is an instrumental one, not a substantive one. As such, rationally non-defective agents face a separate question (i.e. separate from issues concerning rationality) of what they will reason about, i.e. what will compose the substance of their reasoning. The substance in the cases of moral reasons is clearly the moral values an agent holds. It seems entirely possible that an agent could use a Scanlonian account of rationality to refine his lower-level values in order to make them accord better with his higher-level values (i.e. his deeper background judgements). For example, if T does hold a deeper value in favour of respecting women, it seems possible that he could use Scanlon's method of critical scrutiny to get his reasons in line with this deeper value. What seems unlikely, though, is that Scanlon's method will get T to change his deepest values. This strikes me as a debilitating problem, because it seems empirically true that the world contains different groups of peoples whose moral disagreement with each other is radical and profound. Different groups or individuals might simply disagree about values all the way down, suffering from a gap that no concept of instrumental rationality can by itself bridge.

There are at least two ways this gap in Scanlon might be bridged. One way is to drop the instrumental account of rationality favoured by Scanlon and adopt a substantive account instead. As I have mentioned, this is the track Parfit is currently pursuing, and the success of

¹⁰⁵ It might be argued that we could make progress with T by convincing him that the Taliban interpretation of Islam is incorrect, a charge that is often levelled against the Taliban. But whether the Taliban interpretation is correct is controversial, and ultimately irrelevant to us if we are using this example to test the viability of Scanlon's first level of critical scrutiny.

his project is not yet clear.¹⁰⁶ Another way is to concede that there is a realm of reasons in Scanlon, a realm that might be called reasons of autonomy, which does not obviously allow for moral externalism. These are the reasons we have to pursue our personal projects or commitments. Nonetheless, there is a different category of reasons, which we might call deontological reasons or duties, that clearly are external in the relevant sense.¹⁰⁷ It is Scanlon's contractualism which imposes duties upon us. The contractualist formula, which I will call 'C', claims that 'an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement.'¹⁰⁸ Since such acts are wrong, we have a duty not to perform them, and this duty applies to all of us whether or not it accords with our subjective motivational sets. Implicit in Scanlon's account is the claim that all reasonable beings are able to realise that they have this duty, and that they have the duties which follow from it and apply to particular situations.

A crucial question for C, then, is what will count as legitimate criteria for the reasonable rejection of a principle. Scanlon offers a subtle and complex discussion of this issue which emphasises the importance of adequate flexibility in handling the very different kinds of moral problems that can arise. As a result he holds that no general, comprehensive list of criteria can be drawn up in advance, and that we ultimately must rely (at least partly) on intuition and judgement in our attempts to decide particular cases of reasonable rejectability. I endorse this view, but I would like to suggest that some general guidelines to govern reasonable rejectability can be found in the very values which underpin contractualism itself. Contractualism seems to presuppose the importance both of respect for others and of self-respect, the very goods which we saw to be essential back in Chapter 1. Its connection with respect for others is clear enough, as it is difficult to see why we should

¹⁰⁶ This is not to suggest that Parfit otherwise endorses Scanlon's entire programme, but their concepts of moral reasons do have much in common.

¹⁰⁷ My labels of 'reasons of autonomy' and 'deontological reasons' come from Nagel. Nagel also speaks of a third category of agent-relative reasons, reasons of special obligations to those close to us, but I think this category can be subsumed within the previous two. *View From Nowhere*, 165.

¹⁰⁸ Scanlon, 153.

consider it important to justify ourselves to others unless we already respect them.¹⁰⁹ Less obvious perhaps is the connection of C to self-respect, but we may recall our claim from our first chapter that in order to be fully worthy of the respect of others, we must respect ourselves. If this claim is convincing, then it seems that C presupposes both forms of respect. And if C presupposes these goods, then it is difficult to see why they could not serve at least as general guidelines in the governing of the reasonable rejectability of moral principles.

If this is so, then we have a promising explanation for why our Taliban member T will have a reason to allow women to be educated. It is true that this reason does not accord well with T's personal projects or commitments, but it is nonetheless a duty he has. He has this duty because the women in question could reasonably reject a principle which forbids them to be educated – they could reject it on the grounds that it fails rather grievously to show adequate respect for others. This assumes that women should be respected on a level equal to that of men, which is justified by our establishment of equal human worth in Chapter 1. I will elaborate in the next section on the role that equal worth plays in our moral picture. This example also brings out the implication of C that our duties constrain our reasons of autonomy. T's operative reason to disallow the education of women does not become even a *pro tanto* moral reason (much less a genuine one), because it conflicts with a duty he has.

Duties, then, compose at least part of the class of external reasons which had previously proven elusive. But these duties depend crucially on the legitimacy of C, so to make them more credible we must engage in a defence of C. C must be established as well-grounded, and as not suffering any serious philosophical defects. A defence of C will be our project in the next section.

¹⁰⁹ An exception might arise from a pragmatic need to justify ourselves to those who we do not respect, but who hold power over us, such as a buffoonish boss. Thus the above claim depends on the existence of an egalitarian power relationship in the moral realm. I will discuss in 4.2 how this egalitarianism arises by reference to Dworkin's account of the sacred.

4.2 Contractualism

As we have seen, the concepts of right and wrong are captured in Scanlon's account by the contractualist formula *C*, and, as a result, *C* indicates the duties we have to each other. The central role that *C* plays in Scanlon's morality makes any attacks on it particularly serious, and it can be challenged in at least two ways. First, why should we favour *C* at all? What sort of considerations count in its favour, and why should these considerations be considered sufficient? Second, how convincing is Scanlon's claim that justifiability to others is co-extensive with rightness, and that justifiability is in fact a more basic notion than rightness? An adequate defence of *C* will set us up for our discussion of shared reasons in the following section, and has important implications for our next chapter, when we will try to show how rights follow from reasons.

Our discussion will focus on what Scanlon identifies as morality in the narrow sense.¹¹⁰ This is the realm covered by contractualism, the realm of 'what we owe to each other'. It includes duties we have to others to do things such as keeping our promises, and refraining from killing, harming, or deceiving. As Scanlon notes, the term 'morality' is commonly used to cover a broader area of conduct, such as prohibitions against certain forms of sexual conduct, or certain harms to the environment, to name just two examples. There is no reason to think this usage illegitimate, but it points to a class of duties that are created by considerations apart from the contractualist machinery. If we have a reason not to flood the Grand Canyon, for example, this reason does not stem from what we owe to each other, but rather from the value of the Grand Canyon itself. There are many interesting issues that arise from this distinction, but it will not be my task to pursue them. I wish only to note the distinction, and to note that I will focus on the central part of morality which is covered by contractualism.

With this in mind let us turn to the first question, which asks why we think that Scanlon's contractualism describes a central part of morality, or indeed any part at all.

Scanlon is wary of making grandiose claims on behalf of C, such as that its existence is a requirement of rationality. He instead lists three more modest considerations that count in its favour.¹¹¹ First he claims that contractualism is a phenomenologically accurate account of right and wrong. It seems that an important element of what makes an action wrong is that it wrongs *someone*, that it puts me into the wrong sort of relation to that someone. Second, he claims that contractualism offers the right sort of response to a dilemma pointed out by H.A. Prichard. The dilemma states that an adequate account of wrongness must be neither tautological nor too far removed from the sort of considerations we would suppose a moral person first and foremost to be moved by.¹¹² Scanlon thinks that contractualism avoids this dilemma by connecting wrongness with what we owe to others, though he is not making the stronger claim that contractualism is the *only* way to avoid Prichard's dilemma. Third, he claims that contractualism accounts for the complexities of moral motivation. By this he means that it accounts for the fact that we refrain from performing a wrong action not just (or even primarily) because it is wrong, but rather because of considerations like 'she's counting on me' or 'he needs my help.' Scanlon realises that these three considerations do not amount to a comprehensive argument in favour of contractualism, but since he does not believe such an argument to be possible, he hopes that these considerations are sufficient.

Scanlon is probably correct that a comprehensive argument that counts in favour of contractualism is unavailable, and he is wise to avoid overly ambitious Kantian claims about morality's basis. But it is worth noting that the reasons he provides, even if they are all correct, essentially reduce to the first claim, that contractualism accords well with the moral phenomenology. His second claim, for example, depends on the idea that justification to others is the sort of thing that a moral person would be moved by, but the only defence of *this* claim available to Scanlon is to fall back on the phenomenological argument. His third claim, concerning the complexity of moral motivation, seems tantamount to a restatement of the first claim. It amounts to a claim that contractualism accounts for the different ways in which

¹¹⁰ Scanlon, 171-177.

¹¹¹ Scanlon, 155.

right and wrong actions are felt to be right and wrong. Now, this appeal to phenomenology is far from worthless. As we saw in 3.4, in our discussion of McNaughton's moral realism, appeals to the moral phenomenology are of some value, but they also should not be regarded as decisive if at all possible. Scanlon may himself think that no other considerations can be brought to bear on the matter, which would make it reasonable for him to settle on phenomenological arguments.

In my view there is a more substantial underpinning available for contractualism which has already been hinted at in the first section, namely Dworkin's account of the sacred.¹¹³ We will recall that in the process of defending this account in Chapter 1 I argued that each individual life (as well as the existence of certain groups, though again I will concentrate on individuals) is valuable because of the processes that compose or create it, and that we know the processes are valuable because we wonder at them. If it is true that each life is sacred in this way – meaning that each life is inviolable and irreplaceable – then Scanlon's contractualism seems a particularly perspicuous way of drawing out the implications of this fact in the realm of moral theory. His contractualism requires us to think of the personal, or agent-relative, reasons of each individual involved in, or affected by, a given action. If a given agent has a reason to oppose a certain action, and we deem it unreasonable to reject a set of principles supporting that reason, then we have a reason to oppose the action in question. This holds true even if the action maximises expected neutral value in the way that so many utilitarians would favour. It is a distinctive feature of Scanlon's contractualism that aggregating value across individuals is forbidden.¹¹⁴ It is in this way that contractualism recognises the inviolability of each individual. So it seems true not only that Dworkin's account of the sacred and Scanlon's contractualism are compatible, but that Dworkin's account serves as a helpful basis for Scanlon's moral theory. It is conceptually prior to

¹¹² As stated, this is not really a dilemma. But since Scanlon calls it 'Prichard's dilemma' I will retain this label.

¹¹³ I reiterate here that the uses to which I put Dworkin's account are quite different from the use he himself envisions for it. But I cannot see that his account is incompatible with my usage, and it is my intention to retain the substantive claims of his account without revision.

¹¹⁴ He does, however, think that contractualism can nonetheless accommodate some consequentialist intuitions. For this discussion see Scanlon, 229-241.

contractualism, and helps to explain why contractualism is a moral theory we should favour. Put another way, it helps to explain why we have a most basic reason to live with others on terms they could not reasonably reject. I have not tried to make the stronger arguments that Scanlon's contractualism is either entailed by Dworkin's account, or that it is the only moral theory for which Dworkin's account could serve as a basis. But Scanlon's contractualism is perhaps the most natural and fluid extension of Dworkin's account of the sacred into the realm of moral theory. If this is correct, it would help to explain why Scanlon's account accords with the moral phenomenology in the ways that Scanlon suggests, because that phenomenology may be a result of our (at least implicit) recognition of the sacred as Dworkin describes it. Thus a more substantive basis seems to exist for contractualism than Scanlon himself acknowledges.

There is an important implication of this usage of Dworkin's account for a well-known controversy about contractualism. One of the most prominent debates about contractualist theories generally is whether they can establish egalitarianism, or whether they must presuppose it.¹¹⁵ While I am not presuming to take the stronger position that contractualism generally must presuppose egalitarianism, I am suggesting that Scanlon's account does seem to presuppose it. While this would seem to be a problem for orthodox Scanlonianism, I hope to have suggested a way out of the problem by appealing to Dworkin's account of the sacred. I argued in Chapter 1 that Dworkin's account establishes that each individual life is valuable, thereby establishing an equality of human *worth* (in Vlastos's sense). Understanding Dworkin's account as an underpinning of contractualism, then, would appear to solve the mystery of how the egalitarianism of Scanlon's theory (seen most clearly in the demand that we justify ourselves *distributively* to others) is justified. The demand of distributive justifiability to others arises from the equal worth possessed by each individual.

We can turn our attention now to the second problem of the section, which is defending Scanlon's claim that justifiability to others is co-extensive with rightness. Even if we are confident that contractualism has a secure basis, there is a further question of whether

it captures rightness and wrongness in the comprehensive way it intends. This problem is one which has already received a good deal of attention in the literature, with doubts about the Scanlon position being expressed by Blackburn, Colin McGinn, and Philip Pettit. I will try to defend Scanlon's position against two kinds of arguments that have been made in this context.

The first charge, made by all three critics above, is that Scanlon's contractualist machinery does not actually do any useful work in helping us to determine the reasons we have.¹¹⁶ It goes as follows: there must be reasons why some principles are rejected under contractualism and why some are such that no one could reasonably reject them. These reasons seem to be moral reasons, they seem to be antecedent to contractualism, and they seem to do the important work within contractualism. The question arises, then, why we need contractualism at all. If, for example, we reject a principle because it is unfair, why not just say that its unfairness makes it wrong? Why go through the contractualist process of talking about what people could reasonably reject?

A promising answer to this worry has, I think, been provided by Michael Ridge.¹¹⁷ Ridge notes that Scanlon makes use of a distinction between personal and impersonal reasons, and he suggests that this distinction maps onto Nagel's famous distinction between agent-relative and agent-neutral reasons, respectively.¹¹⁸ According to Nagel, an agent-relative reason is one whose general form includes an essential reference to the person who has it, while an agent-neutral reason is one whose general form does not. Ridge notes that Scanlon's critics appear to regard the reasons (e.g. unfairness) for which a given principle is said to be rejectable as agent-neutral reasons, but that this is clearly a mistake. On Scanlon's account, I can reject a principle because it is unfair *to me*, but I cannot reject it on the basis that it is unfair *per se*.¹¹⁹ But if this is case, then it is mysterious how (without contractualism) my

¹¹⁵ This debate has, for example, been conducted in the context of Rawls's theory of justice.

¹¹⁶ Simon Blackburn, 'Am I Right?' *New York Times*, February 21, 1999. Colin McGinn, 'Reasons and Unreasons,' *The New Republic*, May 24, 1999, p. 35. Philip Pettit, 'Doing Unto Others,' *Times Literary Supplement*, June 25, 1999.

¹¹⁷ Michael Ridge, 'Saving Scanlon: Contractualism and Agent-Relativity' (forthcoming).

¹¹⁸ *View From Nowhere*, 152-153.

¹¹⁹ Scanlon, 220.

reason to reject a given principle would give you a reason to react appropriately. For example, how does my reason to reject a principle which would advocate dishonesty give you any reason to be honest with me? It would not appear to give you any such reason if not for contractualism. So it seems that C serves as a necessary bridge between my agent-relative reason to reject a principle and your agent-relative reason to react appropriately.

It might be objected, though, that an endorsement of Ridge's argument is not open to me, for reasons related to my previous comments about the underpinnings of contractualism. If it is true, for example, that the good of respect for others serves as a basis for contractualism, then perhaps there is a new danger that contractualism is otiose. If P should not steal from Q, then why not simply say that this follows from a recognition of the good of respect for others? Why must P go through the contractualist process of justifying himself to Q? The answer, I think, is that contractualism specifies the exact way in which the good of respect for others (and, by extension, self-respect) is worked out in moral theory. By virtue of its appeal to justification to others and of the reasonable rejection of principles it is more precise than would be any vague appeal to respecting others. To put the matter more generally, I see the role of Scanlon's contractualism as one of working out the implications of Dworkin's account of the sacred in the realm of moral theory. Its role on my view is not to add new substantive moral claims, but to serve as a tool which explains how the substantive implications of Dworkin's account can be carried out by agents in their everyday interactions. We saw this previously in the context of egalitarianism, and, in a related matter, it is also true of the two forms of respect.

Ridge's discussion allows us to gain a more sophisticated view of the conceptual story involved when one person owes a duty to another. We can illustrate this by returning to our example of the Taliban from the previous section. An Afghan woman W has a reason (a reason of autonomy) to pursue her education, but this is denied by our Taliban member T who has an operative reason R to deny her the opportunity to be educated. T's reason reflects a principle P, whose content we might state as 'no woman should be allowed to be educated.' W considers the principle by which T acts and determines it is reasonably rejectable on the

ground that it fails to show respect for others. As a result, W has a second reason, namely a reason to reject P. W's reason to reject P, when combined with the contractualist formula, gives T a reason to also reject P, and to recognise R as a less than a genuine moral reason. Why does contractualism demand that T do this? Because P has been determined to be unacceptable, while the alternative principle, namely allowing women to be educated, cannot be reasonably rejected. Thus W's reason to reject P entails T's reason to reject P, to embrace the alternative principle, to act differently (to allow W and other women to be educated), and to adjust his judgement-sensitive attitudes accordingly. This sophisticated picture of duties we have to others is not only important as a defence of C, but it will be important to understanding our derivation of rights in the following chapter as well.

The second charge I wish to examine is one made in a subsequent paper by Pettit.¹²⁰ At first it may sound like a very similar charge to the one dealt with by Ridge, but closer examination shows it to be importantly different. Briefly, the charge is that Scanlon's contractualism can be read in two ways, one of which is unstable and the other of which is highly implausible. Pettit distinguishes two readings we might make of C, which he calls semantic and semantic-cum-substantive, respectively. On the semantic reading, we take C to show us how the normative kind answering to the predicate 'right' is unified in our experience and thought, i.e. by understanding rightness as distributive justifiability. But this will not be the deepest account of rightness available, for we can presumably engage in a further project of investigating the normative kind which answers to the predicate 'right', as that kind exists in itself. Thus if Scanlon considers contractualism to offer a radical account of right and wrong, i.e. the deepest account available, his ambition will be thwarted if we must adhere to the semantic reading. The fact that the semantic reading leads us to a further project is what makes it unstable.

The semantic-cum-substantive reading of contractualism holds that the unity of 'right' that is described by contractualism *just is* what it is to be right. There is no separate

¹²⁰ Philip Pettit, 'Two Construals of Scanlon's Contractualism' in *The Journal of Philosophy* 97, 2000, 148-164.

normative kind which answers to the predicate 'right.' Clearly, this will exempt the semantic-cum-substantive reading from the accusation of instability, but Pettit contends that it suffers from the new problem of a double implausibility: it gives an implausible explanation of why right options are distributively justifiable, and it is phenomenologically implausible. I wish to focus for now on the first of these, the alleged implausible explanation. The argument goes as follows: Scanlon's contractualism requires that some options prove to be complaint immune, i.e. they pass through the filter of justifiability. The complaint immunity of these options thus arises from something other than their justifiability – but it cannot arise from the nature of the options, because if it did we would be driven back to the semantic reading. In such a case, the complaint immunity of the options would suggest that there is something intrinsic to these options (i.e. to right options) that unifies them independently of their being distributively justifiable. Since it is impossible to see how Scanlon can hope to explain the complaint immunity of right options without invoking their common nature, the semantic-cum-substantive reading is highly implausible.

Pettit notes that it is unclear which reading Scanlon would himself prefer, but he implies (I think rightly) that Scanlon would be unhappy with the unambitious nature of the semantic reading as Pettit has described it. Scanlon does seem to consider himself to be offering an account of right and wrong that is deep, perhaps the deepest available. He never gives any indication that contractualism leaves us with further work to do in the investigation of right and wrong. Furthermore, the semantic reading as Pettit has described it would be less than fully satisfactory for my project on the whole, insofar as I am seeking to go as deep as I can in an investigation of the foundations of morality, and particularly of universal rights. But the objection we have examined to the semantic-cum-substantive reading seems formidable. How could rightness be divorced from the common nature of right options? As Pettit suggests, this does seem highly implausible. So, as Pettit has framed the dilemma, it appears that Scanlon is in considerable difficulty.

I suggest, though, that there is a possibility Pettit has overlooked in the way he has set up the problem, and this possibility allows for a way to adhere to the semantic reading of

contractualism without the adverse consequence Pettit suggests. We will recall that the adverse consequence is that the semantic reading points us to a deeper project to be undertaken: an investigation of the normative kind answering to the predicate 'right.' But while this consequence is a possible result of the semantic reading, it is not entailed by this reading. Its existence depends on a crucial epistemological assumption: that we can know the nature of the normative kind in question. Perhaps we can infer that the normative kind answering to 'right' exists, yet we can also determine that its nature cannot be known in detail. If this is the case, then the problem Pettit has pointed to for the semantic account is not a problem at all, and the semantic account provides a 'radical' account of right and wrong insofar as it is the deepest account available.

It seems to me that Scanlon's account lends itself well to just this reading. The options which prove to be complaint immune (and therefore right) do have some element in common beyond their complaint immunity. But further exploration of the normative kind that they point to looks likely to be unpromising. We have seen that Scanlon denies that there is any general formula for determining when a principle is reasonably rejectable. Different criteria will count in different situations, and the method by which we determine which criteria count at which times has an ineradicably intuitive element. It is the criteria for reasonable rejectability which determine the shape and boundaries of the normative kind which answers to the predicate 'wrong,' and this in turn defines the shape and boundaries of the predicate 'right' (because right, on Scanlon's account, is whatever is not-wrong). If this is correct, then our inability to articulate a general formula for reasonable rejectability points to an inability to define the shape and boundaries of the normative kinds referred to by 'right' and 'wrong'. We have no reason to think it mistaken that the normative kinds referred to by these words exist, and indeed their existence is supported by the moral phenomenology and our intuitions. Yet because the content of the normative kind referred to by 'wrong' relies inescapably on intuitions concerning the specific situation in which we find ourselves, so the content of the normative kind answering to 'right' also relies on those intuitions. The inescapably intuitive nature of reasonable rejectability thus shows that the normative kinds

answering to 'right' and 'wrong' are not knowable beyond what Scanlon's account already tells us about them. Scanlon's account of right and wrong is – though not as radical as Pettit would like it to be – as radical as it can be.

It might be objected at this point, though, that the foregoing move is not available to me, because I have suggested ways in which reasonable rejectability is more determinate. It is true that in 4.1 I suggested that the essential goods of self-respect and respect for others, goods that underpin contractualism itself, serve as general guidelines that help to shape the notion of reasonable rejectability. But this is not currently a problem, for two reasons. First, I suggested that these essential goods were only general guidelines in governing reasonable rejectability, not absolute rules. We should take them into account in combination with our intuition and judgement when determining the reasonable rejectability of a given principle in a given situation. They do not serve as the equivalent of a strict and determinate list of criteria for reasonable rejection known ahead of time. Second, to the extent that the two forms of respect are an important part of helping us to determine right and wrong, we already have engaged in the sort of deeper investigation of them that Pettit encourages. This deeper investigation took place in Chapter 1, when we showed how the two forms of respect follow from our more basic reason to regard each individual as having worth, which itself is ultimately rooted in the fact that the processes Dworkin describes are wonderful. To the extent that Scanlon's own account (on our more determinate interpretation) is not as radical as it could be, I have tried to provide the deepest investigation of rightness available.

This section has tried to accomplish two things. First, I have tried to defend the rationale for Scanlon's contractualism as a moral theory by pointing out how it follows naturally from Dworkin's account of the sacred, which I defended in Chapter 1. Second, I have tried to defend C against criticisms that have been advanced against it. I have argued that C is not useless and that it does not beg questions about right and wrong, nor point to any further project concerning an investigation of the concepts of right and wrong. At this stage it is my hope that we finally have a full picture of how it is that Scanlon's account allows for reasons that are external. In the next section I will try to show that some of these external

reasons are reasons that we all have. This will set us up for a derivation of universal rights from those shared reasons in the following chapter.

4.3 Shared reasons

In the previous two sections I have tried to present a reasonably full picture of how a concept of external moral reasons can be defended, and in the process of doing so I provided a defence of C. In this section I wish to explore the implications our picture of moral reasons for a particular class of reasons, namely reasons we all share. I will claim that there are some reasons of autonomy and some duties that are possessed by everyone – reasons had by each individual personally, but whose first-personal content is identical. In fact I think we have already seen what some of these reasons are in previous sections, and in this section I wish merely to explain them better, and to suggest some candidates for other reasons that we all share. These shared reasons will determine the content of the universal rights I will attempt to derive in the following chapter.

We have seen previously that the realm of contractualism covers only part of morality, albeit the central part. In the present discussion we are further narrowing the scope of our discussion, because we are talking about only a part of the ‘central part’ of morality. On my view, reasons we all share are an important part of the realm covered by contractualism – in fact they may be the most important part. But of course contractualism covers a broad range of reasons, many of which will be shared with some agents and not all, and some of which may not be shared with any other agents. These more idiosyncratic reasons are no less valid than ones that are shared by everyone, but I will not emphasise them in the discussion that follows. As I have already implied, my interests in this section are shaped by my more general interest in universal rights, and my concentration on universally shared reasons (which I will hereafter refer to as ‘shared reasons’) reflects that interest in ways that will become even more clear in the next chapter.

In order to understand shared reasons as fully as possible, and in order to make our current discussion compatible with discussions of previous chapters, we must be clear about what we mean when we say a given good or value is 'essential.' We will recall that I offered a definition of essential goods in Chapter 1, which stated that a good is an essential good just if it is good for everyone, and its beneficial effects cannot be replicated by other goods. I now wish to retain the basic elements of this account, but to draw on Scanlon to achieve a more detailed picture of essential value. First, we must be clear about what is meant when we say some *x* is valuable. Scanlon rejects the idea that value is either a natural or a non-natural property, yet he does not wish to deny that things can be valuable, i.e. that value in some sense exists. His solution to this problem is to propose a 'buck-passing' account of value, whereby '*x* has value for *p*' means '*p* has a reason under the circumstances to behave favourably toward *x*.'¹²¹ This favourable behaviour toward *x* might include trying to pursue it, secure it, protect it, or possibly (though not necessarily) to promote it. It is natural features of *x* which give *P* this reason. Thus if I am enjoying a scoop of strawberry ice cream (i.e. if I can be said to value it or consider it good), this is because of natural features of the ice cream: perhaps its smooth creamy texture, its coldness, and its sweet tangy flavour. These natural features give me a reason to eat the ice cream. But this reason is best understood to exist (at least initially) at the pro tanto level, because there might be overriding reasons against eating the ice cream (e.g. perhaps I am dieting). It is in this way that value or goodness can be said to exist in the world even though it is not itself either a natural or a non-natural property.

I think we can achieve a deeper understanding of essential value if we apply the buck-passing account to reasons we all share. On this view, *x* has essential value just if everyone has a pro tanto reason to behave favourably toward it. The pro tanto reasons we all have to behave favourably toward *x* are conferred by natural features of *x*. Thus, if we all have a pro tanto reason to pursue pleasure (and I am not here saying that we do), this is a result of facts about the natural features of pleasure. Conversely, I will argue later that pain has essential disvalue, which means that we all have a pro tanto reason to avoid it on account

¹²¹ Scanlon, 96-100.

of facts about its natural features. Note that the second condition of our previous definition of an essential good, that the good be non-replicable, has dropped out. This condition was present previously in order to ensure that the good in question was not only had by all but was sufficiently weighty. I think the issue of weightiness, though, is captured sufficiently by demanding that we all have a *pro tanto* reason (not just an operative one) to behave favourably toward *x*. So we now have a view of essential value which seems more streamlined, but includes the same elements as our original view. We might also note that to say that '*x* has essential value' adds nothing to the conceptual story which is not already captured by considerations of natural features and reasons, but it need not be seen as misleading either. Labels such as 'essential value' and 'essential good' are not, on the buck-passing view, strictly necessary (just as 'good' itself is not), but they are convenient, and I will continue to use them on this ground.

For some essential value ϕ , then, we all have a reason to behave favourably toward ϕ . But is this reason a reason of autonomy or a duty? I think that essential value is best understood to range over both kinds of reasons. If there is some ϕ whose natural features give us each a reason to favour it, then it seems that we will all have a reason of autonomy to pursue ϕ -ing, even though some may not realise they have this reason. In order to see this, let us go back to our most recent example of the Taliban member T, who found he had a duty to the Afghan woman W to allow her to be educated. He had this duty because the principle by which he previously acted ('women should not be allowed to be educated') was shown to violate the good of respect for others. It seems that, if T can (in principle) accept the fact that his previous principle was reasonably rejectable on these grounds, then he should also be able to infer that he should embrace these grounds as legitimate, and incorporate them into his own personal projects. That is, he should recognise that he has a reason (of autonomy) to pursue respect for others as a personal project, and to change his judgement-sensitive attitudes accordingly. After all, the grounds by which W rejected T's previous principle (namely, that it violated the good of respect for others) was general in character. There is

nothing about the content of this ground which suggests it should be appreciated only by W and not also by T.

This example also shows how an essential good can give us certain duties. The fact that we all have a reason to respect others carries weight in W's (and others') assessment of T's first principle ('women should not be allowed to be educated'). In keeping with the spirit of the Scanlon account of reasonable rejection, we might say that a consideration of respect for others mixes with a degree of judgement and intuition about a given particular case. It seems likely that in this particular case, the importance of respect for others will carry considerable weight in determining the reasonable rejection of T's principle, and is unlikely to be outweighed by any competing considerations. As we have seen, a consequence of this process is that T ends up with a duty to allow women to be educated, a duty which subserves the good of respect for others. So a reason we all have to behave favourably toward ϕ -ing should be understood as a reason of autonomy that, through the process of contractualism, can give ourselves and others duties regarding both ϕ -ing and actions which subserve ϕ -ing.

I mentioned at the beginning of the section that the shared reasons I am discussing are agent-relative (or personal) in character, yet they are had by everyone. Some might think that this sounds like a contradiction. After all, as we have noted, a reason is agent-relative if its general form includes an essential reference to the person to whom the reason applies. Thus, if there is an agent-relative reason to avoid pain, the general form of the reason will note who the reason applies to, e.g. 'Jim has a reason to ϕ .' But if it is only Jim who has the reason, then how can everyone have it? The answer is that, for a 'shared' reason to ϕ , every agent has a different reason to ϕ , insofar as the general form of everyone's reason will be different ('Jim has a reason to ϕ ', 'Mary has a reason to ϕ ', 'Tom has a reason to ϕ ', etc.). But everyone's reason to ϕ has identical content when stated from a first-personal perspective, i.e. everyone can truly say of himself that 'I have a reason to ϕ .' Because the general form of everyone's reason is different, the reasons in question are agent-relative. Because the first-personal content of the reasons is identical, the reasons are in some sense shared.

Some may wonder why we do not simply say that there are agent-neutral reasons to pursue certain goods. After all, are not agent-neutral reasons shared by their very nature? If it is true that agent-neutral reasons are shared, they are shared in a different way than the agent-relative reasons I discussed above. The general form of an agent-neutral reason makes no essential reference to anyone to whom the reason applies. The general form of an agent-neutral reason to ϕ would be 'anyone has a reason to ϕ ', or simply 'there is a reason to ϕ .' There are at least two reasons why I prefer the agent-relative concept of shared reasons to an agent-neutral one. First, the story we have adopted of how reasons come about seems to indicate that all reasons will be agent-relative. It is individuals who have reasons, and who view their reasons from a personal point of view. There is no equivalent in Scanlon's picture of moral reasons of the objective standpoint, or the view from nowhere, found in Nagel.¹²² Thus it is mysterious how impersonal or agent-neutral reasons could be said to exist. Second, even if agent-neutral reasons could exist on our account, they face a serious problem of being adequately motivated. It is unclear whether anyone has succeeded in showing how reasons that are essentially impersonal can be 'personal' enough to move us to act on them.¹²³

At this stage we should have a reasonably clear picture of the more abstract, conceptual issues relating to our concept of shared reasons (and, by extension, of essential value). I would like now to turn to a more detailed discussion of the content of our shared reasons. What personal, *pro tanto* reasons do we all have? My discussion will be an attempt to suggest what some of these reasons are, but I make no guarantees that its range is comprehensive. There may yet be other reasons we can all be shown to possess. Still, even a list that may well be partial will put us in a promising position to show in the next chapter how universal rights can follow from shared reasons.

Our new understanding of essential value allows us to see that we have already encountered suggestions and justifications for a few different shared reasons. For example, as

¹²² See *View From Nowhere*. Nagel himself makes this point in his review of Scanlon, 'One-to-One,' *London Review of Books*, February 4, 1999.

¹²³ For problems see Stephen L. Darwall, 'How Nowhere Can You Get (and Do Ethics)?'; Christine M. Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), Chapter 10; Robert M. Stewart, 'Agent-Relativity, Reason, and Value' in *Monist* 76 (1993), 66-80.

I have already hinted, we can now explain in terms of reasons the essential goods that arose in the context of Dworkin's account of the sacred. We each have a reason to wonder at the processes described in that account. We will recall that these processes include the evolutionary processes which compose our biology, the cultural processes in which we participate, and the process by which we shape and reshape our lives through the decisions we make. Our reason to wonder at these processes is conferred by the natural features of their manifestations, and it is the most basic of our shared reasons. Following closely on its heels, we each have a reason to regard each life as being of worth¹²⁴, and this reason is conferred by the natural features of each life, which are themselves manifestations of the wonderful processes Dworkin describes.

As we have also seen, the essential goods of respect for others and self-respect both follow from the essential worth possessed by every individual. In terms of reasons, we each have a reason to respect others, and we each have a reason to respect ourselves. These reasons follow from the same natural features of ourselves and others we saw in the previous example. In fact, they are so closely related to our reason to regard all individuals as having worth that I will usually be content to speak of the essential values of respect for others and self-respect, leaving the essential worth of each individual life to be implied by the value of these two forms of respect. The two forms of respect serve as the basis for the most basic reason Scanlon suggests, the reason we all have to live with others on terms they could not reasonably reject insofar as they are also motivated by this ideal.

I think the two forms of respect also serve as a basis for other reasons we all share, such as reasons relating to health, freedom or personal autonomy, honesty or fidelity, and access to certain opportunities and resources. We have for each of these derivative goods a reason to pursue them ourselves, as well as (via contractualism) a duty to respect (i.e. at least not to violate) others' pursuit of them. My general strategy of argument in support of these derivative goods is that a failure to realise their importance indicates a failure to appreciate at

¹²⁴ Again, I am leaving open the question of exactly what counts as 'each life.' In Chapter 1 I suggested that my own preference is that worth ranges over all humans and some animals. It will at least range

least one of the three kinds of processes mentioned by Dworkin, processes that themselves underpin the two forms of respect. The goods of health, freedom, and honesty, (as with the two forms of respect themselves) require that we determine an appropriate level of the good to be maintained (e.g. how high a level of health is enough?). I will not address this issue in detail, though it deserves a fuller treatment. I will have to be content to rely on an intuitive notion of how much of these goods is enough.

First consider the good of health. A failure to realise that I have a reason to look after my health, and generally to refrain from damaging the health of others, indicates a failure to appreciate the first of Dworkin's processes, namely the evolutionary processes that are manifested in our biology (as well as in the world around us). These processes are awe-inspiring, and the fact that we are manifestations of them is a significant part of the explanation for why we have worth. But to have no interest in health (one's own and others') is to fail to appreciate the manifestations of this kind of process, and by extension to fail to appreciate the process itself.

The essential value of freedom, or personal autonomy,¹²⁵ follows in a similar manner from the last two kinds of processes in Dworkin's account. Both the process by which we participate in culture, and the process by which we shape our lives through our decisions, require that individuals enjoy a substantial sphere of autonomy. Participation in the cultural processes of humanity requires not only that we not be prohibited from doing so, but also that we not be forced to do so, because it is difficult to see how forced participation can produce genuine cultural expression. This claim depends on the idea that genuine cultural expression must represent the perspectives of the various individuals that comprise that culture. An example of 'cultural' expression whereby a group is forced by a dictator to participate is not cultural expression, but merely the expression of an individual's will carried out by a group. It is even more clear that we could not possibly succeed in shaping and reshaping our lives through our decisions if our freedom was curtailed too sharply. Talk of 'decisions' in the

over all persons.

context of Dworkin's third kind of process is clearly of decisions freely made; otherwise the decisions in question would not be ones by which *we* could shape our lives at all. So to deny that we have a reason to seek and secure a sphere of personal freedom, as well as a general reason not to violate that sphere of others, is implicitly to deny the importance of Dworkin's second two processes.

Our reasons to be honest with ourselves and generally with others follow from our appreciation of Dworkin's third process.¹²⁶ To be dishonest with oneself and others is to fail to respect the process by which we and others shape our lives through our decisions. We saw above that this process requires that the decisions in question are freely made. We might now add that it appears to require that the decisions are honestly made. The wonderful quality of the process of shaping our lives through our decisions concerns the fact that our situation in life becomes by this process a reflection of our deep personality traits. To shape our own lives under the influence of self-deception is to shape them in a way which fails to express who we truly are. In addition, to be dishonest with others is often to lead them to make life decisions (large or small) which are inaccurate reflections of how they would express themselves if they benefited from full and accurate information. To be dishonest with others, then, is to impede them from carrying out the third of Dworkin's processes.

The argument in favour of access to certain opportunities and resources is closely related to our argument in defence of personal freedom. It is nearly impossible to engage in either of the second two of Dworkin's processes unless one has access to some basic resources and opportunities. Persons who live in poverty and isolation might, for example, be able to participate in human culture to some small degree, but their opportunity for participation will be extremely limited. Likewise, they may be able to make decisions about their lives, and thus shape their lives in some small degree, but the range of options about which they can make decisions is likely to be extremely limited. But if it is true that we all have a reason to seek certain opportunities and obtain certain resources, what are these to be? I will not try to

¹²⁵ The notions of freedom and personal autonomy may come apart in some contexts, but in the way I am using them I think they can be used interchangeably.

draw a comprehensive list, but a reasonable place to begin seems to be with goods and opportunities that relate to the other essential goods we have already described. Thus some likely candidates are an adequate level of subsistence (following from the goods of survival, respect for self and others, health and personal freedom), health care (following from the good of adequate health), and education (following from concerns about respect and personal autonomy). As with previous goods, these goods apply to ourselves as well as others. For example, I have a reason to pursue an adequate level of education for myself, and a reason not to impede others from doing the same.

So far we have established a sort of hierarchy of shared reasons, with the reason to regard everyone as having worth being at the top. But might there be shared reasons which are legitimate, but do not derive from a claim about human worth (and its closely-related claims about respect for oneself and others)? Might there be some other way (or ways) to establish the existence of a legitimate shared reason? I think there is at least one other way, which is to appeal to the essential value or disvalue of certain experiential states. The two obvious candidates to come in for such a treatment are the essential value of pleasure, and the essential disvalue of pain. I find the essential disvalue of pain to be the more promising of the two, because I am persuaded by the view that pleasure is not a sensation, but an activity of appreciation. We might hope to establish that pain's natural features give us all a reason to avoid it, but this sort of treatment is not open to pleasure if it is understood as an activity. I prefer the view that pursuing pleasure may well be something many wish to undertake within their realm of personal autonomy, but it does not itself indicate a reason we all have.

I think that the project of trying to show that pain is essentially disvaluable is more promising. It is a view that seems to be held by Scanlon, and is also held by Nagel, but neither offers anything like a complete argument for the position.¹²⁷ They neglect to do this probably because the wide-ranging and complex issues involved in a discussion of the disvalue of pain entail an extended discussion that may seem like an awkward diversion from

¹²⁶ Scanlon has a somewhat different discussion of the importance of honesty, but he reaches the same conclusion that we all have a reason to be honest with each other. Scanlon, 317-322.

moral issues. We are not immune from this possibility ourselves, because unlike the other goods we advocated above, the disvalue of pain does not follow simply from considerations of human worth. It seems we must choose between simply assuming that pain is disvaluable, or else engaging in a treatment of the issue that is much longer than our treatments of other shared reasons. But the first choice is unacceptable, because it is from our shared reason to avoid pain that we will, in the next chapter, derive the right not to be tortured, which is among our most basic and important rights. It is therefore critical that we offer a full explanation for why pain is disvaluable, even if that explanation may seem at times like a digression.¹²⁸

I will begin the discussion of pain with two points of clarification. First, in speaking of pain's phenomenological disvalue I will speak of it as being 'unpleasant,' 'awful,' and words to this effect. I am not entirely happy with the ability of any single word to capture what we might call the 'ouch!' quality of pains. It is an interesting fact about language, and perhaps about pain as well, that we seem to lack the means to speak articulately of pain's felt disvalue. Nonetheless I will try to speak of it, and we will keep in mind the limitations of the words involved. Second, I will assume there is a very close connection between pain's disvalue and our inclination to avoid it. While I am not *defining* pain's disvalue in terms of its behavioural manifestations, it nonetheless seems true that, if pain is truly awful, the reasonable behavioural response to it is to seek its avoidance or relief. David Lewis suggests that a madman might respond to a pain sensation not by seeking its avoidance but by concentrating on mathematics, crossing his legs and snapping his fingers.¹²⁹ I do not know whether there could be such a man or not, but as long as we can safely call him mad he does not pose a problem for us, because I have suggested that attempting to avoid pain is a reasonable response to feeling pain, and madmen are not reasonable.

¹²⁷ Scanlon, 181; Nagel, 156-162.

¹²⁸ The discussion that follows is a modification of my 'The Disvalue of Pain and Pain-Infliction' in *Earth's Abominations: Philosophical Essays on Evil*, ed. Daniel N. Haybron (Rodopi, forthcoming). See Appendix B.

¹²⁹ David Lewis, 'Mad Pain and Martian Pain' in *Readings in Philosophy of Psychology, Vol. I*, ed. Ned Block (Cambridge, MA: Harvard University Press, 1980), 216-222.

If we are to succeed in showing that pain has essential disvalue in the relevant sense, we will have to find a way to counter the sort of view advanced by Hare.¹³⁰ Hare believes that badness is not only a contingent property of pain, but it is a property not always manifested. That is, he thinks it is perfectly possible to conceive of a pain which is not unpleasant, and cites examples we experience of this sort of 'pain.' He thinks that if I lightly drag the point of a pin across my skin, I will feel pain, yet not consider that pain unpleasant. He calls this pain-without-unpleasantness 'pain₁' and pain-with-unpleasantness 'pain₂.' He thinks that pain₂ pains are composed of both a 'bare sensation' (which I will simply call a sensation) and a quality of unpleasantness, while pain₁ pains are composed of the sensation alone. The constitutive feature of pain for Hare is not unpleasantness but the sensation or limited range of sensations which all pains share.

The first point to note in response is that an equally coherent story can be told in Hare's terms about pain being a phenomenon that is bad for everyone. There seems little doubt that many people could perform Hare's needle experiment and not find the experience unpleasant, but the example does not demonstrate what Hare wishes. The bare facts of the matter can be described in this way: when I drag the tip of a pin across my skin, I feel a certain sensation but no unpleasantness, and the sensation I feel resembles the sensation I would feel if I pressed hard enough to draw blood. The only phenomenological difference seems to be that while the light dragging of the pin is not unpleasant, the deeper cut is. But these facts alone do not give us any reason at all to call the first scenario an instance of pain. We could say with equal coherence that only Hare's pain₂ is actually a case of pain, and that pain₁ is something other than pain. Hare admits that in psychological case studies there is no consensus to be found on what people call instances of his pain₁. Some call it pain and some do not. Hare thinks he can fall back on another argument: that as long as we can imagine an instance of pain without unpleasantness then such a thing must be possible, and disvalue cannot be a constitutive feature of pain. But Hare's strategy here of appealing to whether we

¹³⁰ R.M. Hare, 'Pain and Evil' in *Aristotelian Society Supplementary Volume* 38 (1964), 91-106. It may seem odd that I focus on this piece when so much has been written on the subject of pain since its

can imagine x to demonstrate possibility of x 's existence has since fallen out of favour, as it seems that we sometimes think we can imagine things we really cannot.

At this point we have two equally plausible stories about pain with no clear way to choose between them. Some thinkers, including Daniel Dennett¹³¹, have despaired that we are stuck here, and that there is no way to resolve the matter. But I think that even if we may not be able to decide the matter with absolute certainty, there is some reason to favour the view that pain is, by its nature, unpleasant for everyone. As we have seen, Hare thinks that a pain consists essentially of only a sensation. There are two ways we might interpret this thought. It might mean that all pains share the same sensation, or it might mean that pains are characterised by a specific range of sensations. Since it is easy to devise examples of different pains which have different sensations (for example, a dull toothache versus frostbite), the only plausible interpretation is the second one. But is it true even that the sensations of pains fall within an identifiable range? It is difficult to see what the sensations of getting jabbed with needle, having a dull ache in my back, and getting scalded by boiling water have in common. But these experiences do have one thing in common: they all hurt!

I suggest it is more plausible that we think of pains as being composed of both a sensation and a feature (or combination of features) which, when perceived by us, causes us to regard our pain as awful. But obviously we must speak of sensation in a different way than Hare does if we are to avoid the problem he faces. The way we can do so is to say that the necessary conditions for pain to be pain are that it be composed of any sensation accompanied by a feeling of dislike. There is not a pressing need for our class of pains to be held together by a limited range of sensations, because our class is already limited by the fact that pains must invoke a feeling of aversion. So although we have allowed that pains can have any sensation, it by no means follows that any feeling we have will qualify as a pain.

I should emphasise at this point that I am only trying to sketch the necessary conditions for pain; the sufficient conditions are a different matter. It remains to be worked

publication. But I think it still stands as a paradigmatic treatment of the disvalue of pain, particularly of the sort of position I wish to oppose.

out, for example, why we are inclined to differentiate bad itches, or feelings of nausea, from pains. Both meet my necessary criteria for pain, yet my intuitions accord with those of most other persons in telling me that these feelings are somehow different from pains. The way in which they are different remains to be worked out, but I will be content with trying to defend my claim about pain's necessary conditions. Admittedly, it could be that itches and feelings of nausea turn out to be differentiated from pains by a consideration of sensation alone, but it is far from clear this will be the case. Another possibility is that these phenomena are distinguished at least in part by a distinct quality of awfulness each possesses. It may well turn out to be that a correct account of pain's sufficient conditions will not present any problem for my account of pain's necessary conditions.

I think, then, that we have some reason to prefer the view that pain is essentially disvaluable in the way we have specified. But this claim may yet be too strong. It seems possible that, although pain has always given us a reason to avoid or relieve it, there may yet be pains which we enjoy or at least do not mind. Perhaps in some possible world, or perhaps in our own world at some future time, there may be pains which are not unpleasant. I do not know how to prove that such a possibility could not exist. But it seems safe to say that if the most coherent explanation of pain involves the claim that all pains are unpleasant, then the connection between pain and unpleasantness is more likely than not to be an essential one. So with this proviso in mind, I will continue to speak of the connection as essential.

One feature of this account of pain that some may find curious is that it clearly makes room only for *physical* pain. This may seem troubling, because we do often speak of emotional pains: the pains of grief, betrayal, longing, embarrassment, etc. In fact, many people would undoubtedly say that these emotional distresses are the most profound and extreme pains of all. I do not, of course, deny that negative emotional experiences are a part, indeed a central part, of human experience – but the problem then arises of how to justify my claim that the only real pains are physical pains. One way out of the problem would be to

¹³¹ Daniel C. Dennett, 'Why You Can't Make a Computer that Feels Pain' in *Brainstorms: Philosophical Essays on Mind and Psychology* (Hassocks, Sussex: Harvester Press, 1978), 190-229.

take a materialist stance, and claim that emotional experiences are merely physical events anyway. But there is a less ambitious alternative we might prefer. It seems we can still speak of emotional pains on my account, provided that when we do so we understand ourselves to be speaking of pain in a metaphorical sense. When we say we feel the 'pain of despair' we are saying that our despair causes us to feel something very much like the physical sort of pain detailed above. Of course, it is possible that certain strongly negative emotional experiences will be so bad that they cause us to have real physical pains, and any reference to these manifested feelings as pains would be literal, not metaphorical. But negative emotional experiences which fail to yield feelings which have both sensations and a feature (or combination thereof) which is perceived as unpleasant are not (literally) pains, nor do they (literally) produce pains. To say this, though, is not to discount their importance or belittle their awfulness.

I will now consider five objections to my claim that a feeling of unpleasantness is essential to any pain experience. The first is that a defender of the essential badness of pain cannot explain the existence of the masochist. I have suggested that if pain is truly bad then every reasonable person will try to avoid it. Yet it is a fact about the world that some people do (in at least some circumstances) seem to pursue pain and find it pleasurable, and it is not exactly self-evident that all of these people are unreasonable. This seems to point us back to a view of pain more like the one expressed by Hare. But although it may seem obvious that masochists pursue pain for its own sake and find it pleasurable, a story of at least equal plausibility can be devised which gives the masochist's motivations more complexity. It seems possible that the masochist is not really pursuing pain as an ultimate end, but is pursuing pleasure only. It is possible the masochist can achieve certain pleasures only by experiencing pain, because pain experiences are essential means to certain psychological states such a person finds enjoyable.¹³² In a response to Hare's paper, P.L. Gardiner suggests

¹³² For what it is worth, this view of masochism is confirmed by Kenneth Tynan in his account of his own experiences in his recently published diaries. Kenneth Tynan, *The Diaries of Kenneth Tynan*, ed. John Lahr (London: Bloomsbury, 2001). It is also encouraging that the general picture of the masochist I have advanced is reported by Virginia L. Warren to have become the mainstream view among

what two of these states might be: perhaps feelings of guilt are assuaged by the pain experience, or perhaps the seeking of pain is an attempt to transfer responsibility to the punisher.¹³³ Undoubtedly other possibilities exist along these lines. The crucial point is that the existence of such a psychological state, though pleasurable and brought about by pain, does not entail that the pain which is a means to it is pleasurable. It makes sense to say that the pain is bad because it is unpleasant, but that the experience as a whole (which we will for now call the pain plus the resultant psychological state) is one the masochist finds valuable, because the value of the resultant psychological state outweighs the disvalue of the pain. Perhaps someone might think this last point shows that the masochist's pain is actually valuable after all, because its instrumental value outweighs its essential phenomenological disvalue. This brings us to an issue I will take up in my responses to later objections, so I will delay comment until then.

I think this picture of the masochist is to be preferred to one which might emerge from an account like Hare's. If Hare delved more deeply into the implications of his view of pain for masochism, he would find himself faced with two equally unattractive alternatives. He might say that the pains the masochist pursues are all instances of pain₁. That would allow him to say that there are at least some cases in which the masochist finds the mere sensation of pain pleasurable. Perhaps the masochist even feels some pains as pain₁ which other people would feel as pain₂. But although this is possible, it seems to take all the sting out of masochism (so to speak). Do we really wish to say that it is only the *sensation* of being hit with the crack of a whip that the masochist craves? Or is it perhaps necessary that such a person feels pain in the sense of pain₂ in order to satisfy certain desires? We ordinarily think of the masochist as seeking an experience of pain₂, and indeed I think this is the only plausible way of seeing the issue. If sensations alone were being pursued, then the masochist would most likely seek out many which are not ordinarily thought of as unpleasant, and pursue

psychiatrists by the mid-1980's. See Virginia L. Warren, 'Explaining Masochism' in *Journal for the Theory of Social Behaviour* 15 (1985), 103-130.

¹³³ P.L. Gardiner, 'Pain and Evil' in *Aristotelian Society Supplementary Volume* 38 (1964), 107-124. Gardiner's paper is a reply to Hare's.

them for the same reasons that sensations ordinarily conceived as unpleasant are pursued.

But there is no evidence the masochist does this.

Alternatively, Hare could say that the masochist does indeed pursue experiences of pain₂, and finds such experiences pleasurable. But this seems just incoherent. It is mysterious (to me, anyway) how anyone could find pleasurable an experience which is genuinely dislikable. This would mean the same experience is found to be simultaneously pleasurable and unpleasurable, which seems impossible. There may be some hope of salvaging this line of argument by appealing to second-order considerations. We might be able to say that the masochist's pain experience involves simultaneously a first order displeasure and a second-order pleasure. But I do not know if we can make sense of the concept of second-order pleasures.

I will now turn to the second objection, which is that the testimony of some patients who have undergone lobotomies suggests that there are such things as pains which we do not find unpleasant. When a patient receives a lobotomy, all (or at least most) subsequent 'pains' are felt by that patient only in the sense of what Hare would call pain₁. That is, a lobotomy patient feels the sensations of pain in their full intensity, but without the dislike which would normally accompany them. Interestingly, many of these patients are inclined to speak of such experiences in terms of feeling pains but not minding them, which seems to support Hare's view. But while I admit that this fact about lobotomy patients does not favour my view, I do not think it favours Hare's very strongly either. Not all lobotomy patients speak of feeling pains which are not unpleasant: many do, but not an overwhelming majority. Of those who do speak of feeling such pains, there might be some reason to doubt their word. Although I am otherwise happy to support the thesis that people are incorrigible about their own pains, there might be some reason to doubt incorrigibility in the case of patients who have undergone such a traumatic experience as a lobotomy. Also, as I have argued, I think the conceptual story which supports my own view is independently stronger than the one behind Hare's, and if I am right about this then the burden of proof is rather high in the lobotomy

case. That is, I think the testimony of lobotomy patients would have to support Hare's view overwhelmingly in order to cause undue concern.

The third objection is that the fact that some people pursue pain as a means to a worthy end shows that at least those pains can be valuable. An example might be someone who goes on a hunger strike to protest oppressive government policies. Such a person suffers the pains of hunger, yet these pains are valuable as a political instrument. In fact, it may well be that the instrumental value of these pains far outweighs their essential disvalue, so can we not say that the pains are good in an overall sense? I think that if we were to do so we would betray a confusion about what in this picture is valuable and what is not. The hunger striker has a reason to bring about a change of government policy (because the policy really is oppressive), and his (perceived) hunger helps him to achieve this end. What is valuable is the relation of the (perceived) hunger to the state of affairs at which the striker aims (i.e. anyone in the hunger striker's position would have a reason to engage in this activity), and it is this value we are referring to when we talk of the hunger's instrumental value. But the *pain itself* is no more valuable than any other pain. To say, then, that the pain of the striker's hunger has instrumental value is to say that it enjoys a certain valuable relation with a state of affairs which is itself valuable (indeed, it seems the value of the relation is derived from the value of the state of affairs). The only way the value of the relation could say anything interesting about the value of the pain itself is if the relation is a necessary one, and obviously this is not the case – we can think of examples of any of these means-to-an-end pains which are clearly bad. In fact, the very instrumental effectiveness of pains like the hunger striker's depends on the fact that the pains will be perceived as having disvalue. If no one thought the pains of starvation were bad, no one would likely be moved by this sort of protest.

A fourth objection is that some people who are not clearly masochists pursue pain for deeply considered reasons, and that their pains can be said to be valuable. For example, some ascetics choose to lead a life of hardship, deprivation and pain. They seem to be different from both the masochist, whose reasons for pursuing pain are usually sexual, and the hunger striker, who would choose a less painful form of protest if it was likely to succeed. The

reasons of the ascetic for choosing pain seem to be tied quite closely to a considered judgement about the human condition. Conceptually speaking, though, I think the ascetic inevitably falls into the camp of either the hunger striker or the masochist. Many ascetics (e.g. monks) live as they do because they believe themselves to be following strict guidelines set down by religious authorities, and as such they believe that their life of pain will yield rewards in another life. Of course, a cynical view of their activities suggests that they are living a life of pain only to receive a reward, and that if their religion allowed them to live in an easier way they would gratefully accept. Obviously in this case their pain experiences would have the means-to-an-end quality of the pains of the hunger striker. But even if we take a less cynical view and claim that (at least some) monks believe in their hearts that a life of pain is a holy one, this may not change the fundamental point. It seems their positive valuation of pain would still be informed by a religious context which promises them salvation. Many would not value pain if they did not also believe in other elements of their religious framework (such as salvation).

Now, it is possible that there are monks who would live a life of pain and hardship even if they were convinced of the untruth of salvation. Similarly there may be ascetics who seek out some forms of pain and who choose asceticism for non-religious reasons. Many would be uncomfortable calling such people masochists, because, as I have mentioned, the term masochist is usually used to refer to someone who pursues pain as a means to sexual pleasure. The ascetic may seem radically different from the masochist, because the ascetic pursues pain for deeply-considered, perhaps mystical, reasons. Yet I think that, for our purposes, these non-religious ascetics (and hardened monks) fall conceptually into the masochist's camp. They pursue pain for the sake of something else, such as a moral ideal or psychological state, they cannot obtain by any other means. The fact that the masochist is after sexual pleasure while ascetics are pursuing some other end is not relevant to the argument, so our initial inclination to call the masochist and the ascetic strange bedfellows proves to be unfounded.

I have saved what is perhaps the most common objection for last. It is that pain cannot be a bad thing, because it serves as a useful warning about serious dangers to one's health. The pain of cutting my skin, for example, is said to be a good thing because it keeps me from cutting myself too often or too deeply and losing too much blood (or perhaps exposing myself to infection). The pain I have in a certain muscle when I overexert myself is said to be good because it calls my attention to the fact that if I strain the muscle further, I might do serious damage to it. The pain of a headache at the onset of influenza is good because it causes me to be more restful, which helps to prevent me from becoming more ill.

I do not think anyone would dispute the fact that pains do often have this sort of instrumental value, and we might further think there is something about this general instrumental value of pains which makes this case different from the ones we examined in the third and fourth objections. The connection between pain and usefulness here seems so close that we might wonder if it is a necessary one. If pains are necessarily useful, then it seems unlikely we can call pain essentially disvaluable. But the connection between pain and usefulness cannot be a necessary one, because it is clear that not all pains have instrumental value. For example, sometimes we have rather ordinary aches or cramps which do not serve as any particular warning to us. The case can be more extreme: think of the intense pain which might be suffered by someone who has acute arthritis. This pain does not seem to serve any purpose which helps to guide the sufferer's behaviour. Even pains that have some connection with instrumental value, such as the pains of a burn victim, might present us with a case in which the phenomenological disvalue of the pain is far more intense and prolonged than it needs to be to have instrumental use.

It is clear, then, that the supposed instrumental value of pain turns out to be a value which applies contingently, and to only some pains. So, as in the case of the religious ascetics of the fourth objection, the useful pains of the fifth objection ultimately cannot escape the argument we advanced in the context of the third objection. Pains that have 'instrumental value' are not themselves valuable (when we consider only the felt pain itself), but enjoy a valuable *relation* to a particular fact or set of facts. It is this valuable relation which makes it

permissible to say that the pain experience on the whole has instrumental value. For example, the instrumental value of my pain when I cut myself arises from the relation of the pain to various facts: the fact that the cut causes me to bleed; the fact that a deeper cut would cause me to bleed more; the fact that if I bleed too much I will die, and so on. There is an interesting way, though, in which this conceptual story differs from the one we told in the case of the hunger striker. In that example, the value of the relation between the pain and the fact or set of facts with which it was connected (the bringing about of a change of government policy) depended on the positive value of the fact or set of facts itself. But in our present example, the value of the relation depends on the *disvalue* of the facts with which it is connected: bleeding excessively, getting infected, dying and the like are all bad things. This difference follows from the different roles that pain is playing in the two examples – in the first instance of bringing about something good, in the second one of warning us about something bad. But the important point is that, in both cases, the value that some might think to attach to the pain itself is actually found in the relation the pain has to a fact or set of facts.

The way I have defended my position, though, may lead to yet another objection, one which combines a representationalist theory of pain with evolutionary considerations.¹³⁴ It might be argued that humans (and other animals) have evolved in such a way that pains are *essentially useful* as representations of disturbances in the body. Pain cannot be bad, because the very purpose of pain is to alert us to bodily disturbances or damage. The objection contends that I have made too much of the exceptional cases in which certain pains are not useful. Representational theory entails the possibility of misrepresentation, and thus the possibility of pains which are not useful. Furthermore, biologically our pain system is a natural system, and natural systems are imperfect, so not only are useless pains conceptually possible – they will in fact sometimes occur. The objection's point, though, is that pains are good because they are essential to playing the helpful role that they play. That is, the job

¹³⁴ For a representationalist theory of pain see Michael Tye, *Ten Problems of Consciousness: A Representational Theory of the Phenomenal Mind* (Cambridge, MA: The MIT Press, 1995), 111-116.

pains perform is vitally important, and they must have phenomenological disvalue to do this job.

But it is not clear, to me anyway, that we need something unpleasant like pain in order to carry out the function pain does. Do warnings about bodily damage need to be awful (and sometimes even unbearable)? There would certainly be a problem if such warnings were pleasurable, insofar as such a scenario might lead us to seek out experiences which are actually detrimental to our well-being and survival. But perhaps warnings about bodily damage could be sensations which are neither pleasant nor unpleasant. Admittedly, there is a danger that such sensations would be less noticeable than disvaluable ones, but we could solve this problem by saying that our warning sensations could be neutral regarding their pleasantness or unpleasantness, yet phenomenologically unique. Even if this point is granted, some might insist that we still need the unpleasantness of pain as a sort of paternalistic feature of our biology, to guard against a natural carelessness or even self-destructiveness in our behaviour. I am not sure there is actually such a carelessness in our nature, but even if there is, the argument is not clearly successful. A world in which we cause ourselves more bodily damage but feel no pain is not clearly worse than one in which we cause ourselves less damage but suffer quite a bit of pain. In fact, it might well be better. The comparison would undoubtedly turn on just how much bodily damage, versus how much pain, we are talking about, and devising the weightings might be a complicated task. But I, for one, would be willing to accept some increase in bodily damage if it meant living a life free of the unpleasantness of pain. And, as I have said, this choice may well be irrelevant anyway. I think that it is quite possible that a phenomenologically distinctive neutral sensation could perform the job of warning us about bodily danger as well as pain does.

I have tried to show that pain is essentially disvaluable in the buck-passing sense, i.e. that the natural features of pain give everyone a reason to behave aversely to pain, for example by avoiding it, preventing it, minimising it, etc. This means that we all have a reason of autonomy to avoid pain, and that any principle which advocates or allows the causing of pain to another will have at least a *prima facie* rejectability. But neither the reason of

autonomy nor our duties to others will be absolute in character, as is accounted for by their *pro tanto* status. Even though the masochist or the ascetic has a reason of autonomy to be averse to pain due to pain's phenomenological disvalue, the reasons which stem from their personal projects (which involve some suffering of pain) may outweigh the reason to be averse to pain. A marathon runner, for example, might reasonably accept that her project of running marathons will entail the suffering of a great deal of pain. There are, after all, such people in the world, and we do not consider them to be obviously unreasonable. Regarding our duties, we will generally have a duty not to cause pain to others, because principles which allow the causing of pain will generally be rejectable. But it is easy to conceive of principles which are likely to serve as exceptions. A doctor, for example, will sometimes be expected to act by a principle which allows him to cause some pain to his patients in order to prevent a worse scenario, as when he administers a vaccination for a debilitating disease. The fact that pain has essential disvalue, though, is an important factor in considerations of whether a given principle involving the inflicting or allowing of pain is reasonably rejectable, and we can assume that such principles will be acceptable only in exceptional cases.

This last discussion indicates a more general point to be made about shared reasons. We should recognise that the issues of universality and absoluteness are separate issues, issues that are conflated at our peril. This point applies equally well to our discussion of rights in the next chapter. Universality refers to the range of beings to which a given reason applies, while absoluteness refers to the strength that reason has when it is competing against other reasons. Universal reasons need not be absolute, and reasons of absolute force need not be universal. I have suggested several different reasons which are shared by everyone, but, as I have said, these reasons are (at least initially) *pro tanto* in character. Even regarding a reason as basic as our reason to live, there may be extraordinary circumstances that suggest that killing ourselves is acceptable. Similarly, there may be extraordinary circumstances which suggest that a principle which allows us to kill others is acceptable. To say that there could not be such circumstances would be to abandon the spirit of Scanlon's account of reasonable rejection, which (as we saw previously) emphasises the importance of judgement

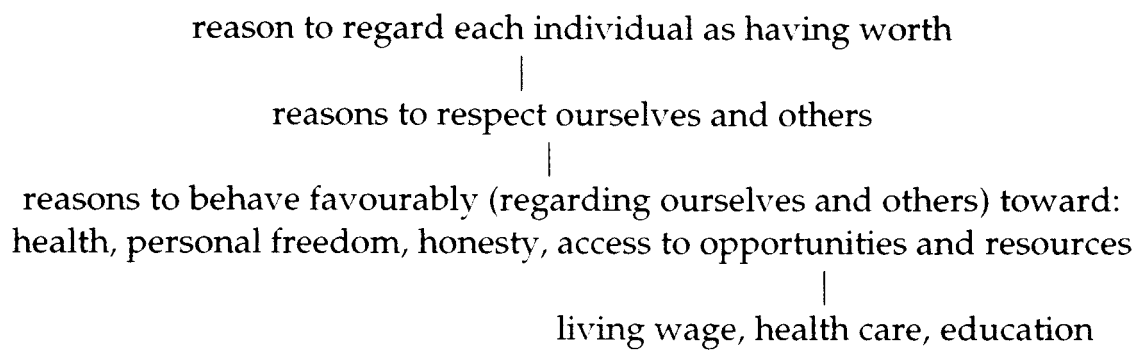
and intuition about individual cases, and resists attempts to draw up inflexible general sets of rules. I should emphasise, though, that our shared reasons will nonetheless play an important role in considerations of reasonable rejection, and can be understood to set the bar high for exceptional cases. This is because, stemming ultimately from Dworkin's account of the sacred, our shared reasons are reasons that concern some of the most fundamental aspects of our existence.

A general question about the specific content of our duties has been lurking in the background of this section. If it is true that we have a duty to behave 'favourably' toward, e.g., the freedom or health of others, and to behave 'aversely' toward the pain of others, what does this behaviour entail? Does it involve only relevant kinds of non-interference, so that, e.g., I have a duty not to worsen your health, not to unduly infringe on your personal freedom, not to inflict pain upon you, etc.? Or, more strongly, does it involve the provision of goods to others, or even the saving of others? If you are in pain, do I (at least sometimes) have a duty to rescue you? I think that what we have said so far about duties and about reasonable rejection could be compatible with a range of views along these lines. If it is true that having access to certain opportunities and resources is essentially valuable, then it seems we will at least be required to support a state that provides those opportunities and resources, and this goes beyond mere non-interference with others. On the other hand, it seems that duties to rescue are likely to be constrained to some extent by the essential value of personal autonomy. Unfortunately I lack space to give a more detailed account of this important issue, but at least we have indicated some general guidelines to follow.

In this section I have presented a view of how we might come to have certain shared reasons on a Scanlonian account, and of what at least some of these reasons are likely to be. I suggested that understanding our previous account of essential value in Scanlonian buck-passing terms helps to square our current picture of shared reasons with our previous one of essential value. As for the content of our shared reasons, it includes and derives from the values which underpin Scanlon's contractualism, values ultimately explained by Dworkin's account of the sacred. I suggested, though, that there is at least one shared reason which does

not derive simply from these fundamental values, and that is the essential disvalue of pain.

Thus the picture of shared reasons we have presented would seem to look something like this:



To the side of this hierarchy is our reason to behave unfavourably toward pain, a reason which does not derive from any of the above reasons, but whose moral implications are guided by those reasons. As I have said, the content of these shared reasons will help us to identify the content of our universal rights in the next chapter, if indeed we can succeed in our project there of deriving rights from reasons.

4.4 Conclusion

In this chapter I have tried to present a full explanation and a defence of a certain picture of moral reasons. That picture has been largely faithful to the one presented by Scanlon in *What We Owe to Each Other*. My view differs from Scanlon's in the respect that it is somewhat more determinative, particularly regarding the reasonable rejection of principles, and regarding my claim that the underpinnings of Scanlon's contractualism suggest the existence of a class of reasons we all have. I will close by briefly summarising the view of moral reasons that has emerged in the chapter.

We identified two broad categories of reasons, namely reasons of autonomy on the one hand, and duties on the other. Reasons of autonomy are the reasons we have to fulfil our personal projects and commitments. Duties are reasons we have to treat others in a specified manner. These two kinds of reasons are not mutually exclusive: it is possible to incorporate duties to others into our personal projects, and indeed Scanlon's discussion of judgement-

sensitive attitudes suggests that this will happen as our attitudes become more refined. All of the reasons we have discussed have been agent-relative in character, meaning that their general form includes a reference to the person who has the reason.

Reasons of autonomy and duties (or, at least, those duties that have not been incorporated into our reasons of autonomy) arise in different ways. Let us first review the formation of reasons of autonomy. A given moral agent *P* begins with a set of judgement-sensitive attitudes, which include beliefs, intentions, hopes, fears, and attitudes such as admiration, respect, contempt, and indignation. Some of these attitudes arise unbidden. If an unbidden attitude in favour of ϕ -ing presents itself, I will normally consider myself to have an operative reason to ϕ . This operative reason must then undergo a two-step deliberative process. In the first step, I ask questions about my operative reason such as 'Am I overlooking something? What kinds of reasons might there be for ϕ -ing apart from the ones I have already considered? What reasons do particular cases seem to present, and what can I learn from those cases?' If my answers to this line of questioning do not suggest the rejection of my operative reason to ϕ , then it becomes a *pro tanto* reason. This brings us to the second step of our scrutiny, where we compare this *pro tanto* reason with other *pro tanto* reasons that may be present, to see if it outweighs competitors. If it does, then it is a genuine reason.

We all have a basic reason (of autonomy) to live with others on terms they could not reasonably reject insofar as they are also motivated by this ideal. This reason is itself underpinned by our reasons to respect ourselves and others, and ultimately to regard each individual life as having worth. We have these general reasons because we are capable of realising that each individual is a unique product of wonderful processes, processes such as the evolutionary ones that result in our bodies, our minds, and the world around us; cultural ones that link us to persons and civilisations past and present; and processes of decision-making by which each individual shapes her life in such a way that her life is a testament to her identity. From our reason to live with others on terms they could not reject we derive the contractualist formula *C*, which determines the concepts of right and wrong. It states that an act is wrong if it would be disallowed by any set of principles for the general regulation of

behaviour that no one could reasonably reject as a basis for informed, unforced general agreement.

It is C which gives us our duties to others, which we can see in the following example. Let us say that a mother loans the family car to her teenage son on the condition that he bring it back before midnight. He agrees, but does not come home until two in the morning. The mother considers the principle by which her son has his alleged reason to be late and concludes (correctly) that it is reasonably rejectable. Since contractualism suggests that the son is wrong to pursue a course of action which follows from principles that can be rejected, he has a duty to reject the principles by which he acted, and to adopt principles incompatible with the first set.

A realisation of the fact that the values of self-respect and respect for others underpin contractualism suggests that we have shared reasons other than just one to live with others on terms they could not reasonably reject. Most obviously, we all have reasons to respect ourselves and others. It seems likely that we also share derivative reasons to pursue, attain or protect a certain level of health, personal freedom, honesty, and access to opportunities and resources such as a living wage, health care, and education. We also all have a reason to avoid pain, and not to inflict it upon others. With regard to favouring these goods for ourselves, the status of our reasons is (initially) *pro tanto*, because these reasons could sometimes be overridden by competing *pro tanto* reasons. With regard to our duties, the value of the above goods figures into the criteria by which we determine the reasonable rejectability of principles (e.g. if a principle favours infringing upon someone's personal autonomy it is likely to be rejectable). But none of these criteria have absolute force, and any one of them might be overridden by other considerations in particular cases. However, just as we should think of the above goods as generally pointing to genuine reasons of autonomy, so we should think of them as generally pointing to decisive criteria of reasonable rejectability. Exceptions will exist, but they will be relatively rare.

I have strived to make the picture I have presented in this chapter of moral reasons clear and comprehensive. Yet we must hope it has not been entirely comprehensive, because

our project in the final chapter will be to show that it has been missing something.

Specifically, I will try to show that this framework of moral reasons benefits from the introduction of rights, and that it yields rights in a way that seems natural and unforced. This project will conclude the thesis proper, and aspires to fulfil our long-standing aim of devising a potent and original account of universal rights that is grounded in moral objectivism.

Chapter 5

The Derivation of Rights

It is the project of this chapter to argue that a concept of rights, including universal rights, can and should be derived from the Scanlonian account of moral reasons we defended in the previous chapter. As such, the chapter serves as a culmination of sorts for the thesis. It fulfils the promise of our first chapter that rights, and especially universal rights, must be included in a proper understanding of moral theory. It is a product of our argument that a credible account of universal rights must be grounded in an objective meta-ethics, and that the most promising meta-ethical grounding appears to be the strategy of irrealist cognitivism, of which Scanlon's account is an example. The derivation of rights will rely on and utilise the entire discussion of the previous chapter.

I have said that the project here is to demonstrate that rights can and should be derived from Scanlonian moral reasons. We should be careful, however, not to state our aims too ambitiously. I have been careful to point out previously that I have not tried to show that Scanlonian reasons are the only valid grounding of universal rights, or especially of non-universal rights. Similarly, I will not attempt to claim in this chapter that rights must be derived from Scanlonian reasons in order to give Scanlon's account any merit or credibility. As I argued in the previous chapter, I think that orthodox Scanlonianism has much to be said in its favour. I will, however, argue in this chapter the inclusion of rights in Scanlon's contractualism makes it a superior theory by its own lights than it is without rights. This claim seems more than sufficiently ambitious, and should be of considerable interest to scholars of Scanlon if it can be shown to be plausible.

The rights I will be discussing are of the kind identified by Wesley Hohfeld in his classic taxonomy as claim-rights.¹³⁵ This is consistent with our discussion in Chapter 1, which also emphasised claim-rights. We will recall from that discussion that the fact that some agent (or group) A has a claim-right to some good x implies that another agent (or group) B has a corresponding duty with regard to x . This corresponding duty will usually be to not interfere with x , and possibly to provide A with x . Claim-rights are sometimes contrasted with liberty rights, which are a weaker kind of right. My liberty right to ϕ implies that I am permitted to ϕ , i.e. I have no duty not to ϕ . Though it is not clear *prima facie* how we might derive liberty rights from Scanlonian reasons, there also seems no reason to think it would be impossible to do so. Liberty rights might somehow be shown to correspond to reasons of autonomy, so that, e.g., my reason to climb Mount Kilimanjaro corresponds with a liberty right to do so. Liberty rights might even be identified with reasons of autonomy.¹³⁶ But while this sort of inclusion of liberty rights may well be possible, I do not see any advantage to introducing them into our picture. I cannot see that they would add anything conceptually significant to reasons of autonomy, for, if I have a (genuine) reason of autonomy to ϕ , this already implies that I have no duty not to ϕ . Every reason of autonomy to ϕ can thus be thought to be (or perhaps entail) a liberty right to ϕ , so while there is no harm in speaking of these reasons as being (or entailing) liberty rights, at least in a metaphorical sense, neither does there seem to be much advantage. So I shall leave liberty rights aside.

With this in mind I will now proceed with the discussion in several parts. I will first discuss how it is conceptually possible to derive rights from Scanlonian reasons. This account will turn out to depend on, and thereby lead us into, a discussion of why it is useful to derive rights from these reasons. These first two sections will concern the larger class of rights, which includes both universal and non-universal rights. In the third section I will narrow the

¹³⁵ Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Allied in Judicial Reasoning*, ed. Walter Wheeler Cook. (New Haven: Yale University Press, 1919).

¹³⁶ Though this is not necessarily so. We might prefer to say that we have liberty rights to do not only what we have reasons of autonomy to do, but also things that we have no reasons of autonomy to do. For example, I may have a liberty right to climb Kilimanjaro even if I have no inclination to do so. But

focus and discuss the derivation of universal rights from shared reasons. I will then identify the content of at least some of our universal moral rights. In the final section I will consider two objections that might be made against the argument in this chapter. My rights view can be summarised in the following four points, to which I will repeatedly make reference throughout the chapter:

1. Rights are a distinct subclass of reasons. They exist just when certain facts hold about our reasons to reject given sets of principles. I have a right to some good x just when it is true that I would have a pro tanto reason to reject any set of principles held by another agent that would prevent me from attaining, preserving, or exercising x .
2. The criteria which govern the reasonable rejection of principles also account for the defeasibility of rights.
3. The justification for the introduction of rights into a Scanlonian account ultimately lies in the cumulative weight of arguments in favour of the need for rights, both in a Scanlonian framework particularly and in morality generally.
4. Universal rights correspond to facts about shared reasons in the same way that non-universal rights correspond to facts about unshared reasons. The derivation of universal rights does not present any special problems not encountered by the derivation of non-universal rights.

I will attempt to explain (1) and (2) in the first section. I will also touch on (3) in 5.1, though the arguments to which that point refers will be presented in the second section. Point (4) will be covered in the third section of the chapter.

5.1 The conceptual story of rights

In this section I will discuss the conceptual story behind the derivation of rights from Scanlonian reasons. As I have mentioned, this entails the explanation of (1) and (2) above, and a brief discussion of (3) that will lead us into the following section. With this in mind we can turn our attention to (1). (1) first identifies rights as a distinct subclass of reasons, by which I mean they are a subclass distinct from the others we have already identified, namely

even on this picture I cannot see that liberty rights are adding much that is conceptually useful to our

reasons of autonomy and duties. The reasons of this subclass can be characterised as reasons to expect a certain kind of treatment with regard to a certain good, and to complain if this treatment is not given. If we wanted to identify the subclass explicitly in terms of reasons we could call it the class of 'reasons to complain,' though I will identify it simply as 'rights.'

Rights are distinct from reasons of autonomy in the sense that, like duties, they are deontological in character. The content of our rights does not depend on our personal goals or aspirations, but depends rather on a consideration of what sets of moral principles are reasonably rejectable. As we saw in 4.2, the content of our duties similarly depends on this sort of reasonable rejectability. But rights are different from duties in the respect that we can legitimately choose not to uphold our rights, but we cannot choose not to fulfil our duties. To put the matter another way, we can opt out of rights, but not out of duties. I will consider an objection to this point later, but for now I hope to have suggested a foundation for differentiating rights from reasons of autonomy and duties.

We now have some idea of how to answer the question of what rights are in the Scanlonian framework. Now I wish to address the question of the conditions under which we have rights. (1) attempts to address this issue by suggesting that rights are connected to facts that hold about the reasons to reject given sets of principles (which I will call R-reasons) we would have under certain conditions. This sounds confusing, but a step-by-step treatment of it reveals the idea behind it to be rather simple. First, it is helpful to review what R-reasons are, and to remind ourselves of the crucial role they play in contractualism. We saw in the previous chapter that when someone treats us in a way that we find *prima facie* objectionable, we have an operative reason to reject the principles by which they have acted. This operative reason becomes a pro tanto reason if it meets a threshold of plausibility by surviving a line of questioning along the lines of 'Am I overlooking something?' and 'What kinds of reasons might there be apart from the ones I already recognise?' Our pro tanto reason then becomes a genuine reason just when it is not overridden by competing pro tanto reasons. The fact that we have a genuine reason to reject a given set of principles is what makes the objectionable

action wrong, and that gives the perpetrator a duty to reject his own principles and to act according to a new set. R-reasons, then, are what give others their duties, and this is one reason it is appropriate to call the role they play crucial.

What (1) adds to the account of R-reasons is the claim that there is a somewhat less direct sense in which they also give us our rights. Specifically, I have a right to some good *x* just when it is true that I would have a *pro tanto* reason to reject any set of principles held by another agent that would prevent me from attaining, preserving, or exercising *x*. There are two important features to note about this formulation. The first is that it speaks of *pro tanto* reasons to reject principles (or *pro tanto* R-reasons), rather than genuine ones. This is an important difference from the account of duties above, because we saw there that it is only a *genuine* R-reason of agent P that gives agent Q a duty to reject the principles he held. I think it is best to briefly delay the discussion of this point, because it lies at the heart of what is discussed in (2), and we have not yet finished discussing (1), so I shall return to this point. The second important feature to note, though, is one that should receive a full treatment now. It is the fact that the conditions for right-holding are explained in a conditional form. Whether or not I have a right depends on whether it is true that I *would* have a certain *pro tanto* reason in a given circumstance. By contrast, whether I have a duty to reject the principles by which I acted depends on whether someone else *does* have a genuine R-reason regarding my principles.

The formulation of rights depends crucially on the fact that we can determine in advance what sets of moral principles (and, by extension, which actions) would be reasonably rejectable. Though Scanlon does not say much about determining this matter in advance, there seems no reason why it would be impossible to do so at least some of the time. This seems true for some genuine reasons, as we could imagine a certain act being performed, imagine the reasons behind it, and imagine whether we could reasonably reject the principles behind it. To take an extreme example, I might imagine a case of someone torturing me for fun. It seems I would straightforwardly have a *pro tanto* reason to reject the principles behind such an act, and it also seems that there would be no overriding *pro tanto* reasons

counting against my reason. Thus I can determine in advance that the principles behind such an action are reasonably rejectable. Now, there may be times when we can determine in advance that we would have a pro tanto reason to reject a given set of principles, but not that we would have a genuine reason to do so, because of an inability to imagine all of the relevant possibilities relating to competing pro tanto reasons. For example, I might imagine a child stealing bread from me, and think that in such a case I would have a pro tanto reason to reject the child's principles. This follows from the fact that the bread is my property, and to understand the notion of property is to understand that we normally should not steal the property of others. But it is less clear whether I would have a genuine reason to reject the child's principles. Perhaps there are overriding pro tanto reasons not to reject the child's principles, such as the fact that she is homeless and starving. So while there are limitations to what we can imagine in advance about reasonable rejectability, it seems nonetheless possible to predict the wrongness (especially on a pro tanto level) of many different acts and sets of principles. If this is true, then there seems no significant impediment to determining what our rights are on the formulation I have provided.

The principal advantage of formulating rights in this conditional form is that it explains how we can have rights antecedent to being wronged. If we tried to simplify the view by saying that rights just *are* R-reasons, we would encounter the unattractive consequence that we would need to be wronged before we had the relevant right. R-reasons, after all, exist only after a wrong has occurred – or, in the case of operative or pro tanto R-reasons, they exist only once we suspect we have been wronged. By making rights a distinct subclass of reasons and connecting them with facts about the R-reasons we would have under certain circumstances, we circumvent this problem. This move not only brings our rights view into line with a commonly-held rights tenet (i.e. that it is possible to have rights antecedent to being wronged), but it also preserves some of our most important arguments from Chapter 1 in favour of the need for rights. We saw then that rights contribute to our self-respect not just through their exercise, but also (and perhaps even primarily) because we know in advance that we have them, and think of ourselves differently as a result.

Let us move on now to an explanation of (2), which focuses on the normative force of rights. The idea behind this point is very simple: our rights are overridden just when the pro tanto R-reasons with which they correspond fail to become genuine. As we have seen, this happens when competing pro tanto reasons outweigh a given pro tanto R-reason. The easiest way to explain this is by seeing how it works in an example, and for this I will return to our child bread thief. We can say in this example that I have a right to the loaf of bread in question, because it is possible to determine in advance that I would have a pro tanto reason to reject the principles of anyone who tries to prevent me from securing it. A child takes it from me and runs away. Here is the important point for our present discussion: whether my right to the loaf of bread is overridden depends on whether my pro tanto reason to reject the child's principles (i.e. my pro tanto R-reason) becomes genuine. Let us say I catch up with the child and find that she is trying to feed her starving family, and can tell that I am not similarly destitute. This might well present a pro tanto reason that overrides my pro tanto R-reason. If it does, then it is still true that I had a right to the loaf of bread, because it was true that I would have had a pro tanto reason (and in this case did have such a reason) to reject the principles of anyone who took it from me. But it is also true that the child did not wrong me, because she had an overriding pro tanto reason to steal the bread. The most natural explanation for this combination of facts, and perhaps the only satisfactory way to account for them, is that I had a right to the bread, but my right was overridden by the child's reasons. If the child's reasons had been defeated by my pro tanto R-reason, then my R-reason would have become genuine, and my right would not be overridden.

We can now summarise in general terms what the preceding example has demonstrated. We have seen that our rights are overridden just when the pro tanto R-reasons with which they correspond fail to become genuine. Such reasons fail to become genuine when they are defeated by competing pro tanto reasons. As we have seen in the previous chapter, the circumstances under which they are so defeated cannot be completely delineated in advance, and rely on judgement and intuition about individual cases. Since it is only when our pro tanto R-reasons become genuine that we can say we have been wronged, my account

has clear implications for the relation between the defeasibility of rights and wrongness. My right is *overriding* just when, and every time, I have a right and am wronged with respect to it. On the other hand, my right is *overridden* just when, and every time, I have a right to some good x , I am prevented from attaining, preserving, or exercising x , yet I am not wronged with respect to x . The fact that rights and wrongness line up in this way is, I think, an encouraging sign for our view of defeasibility.

Some may object to the implication in my account that it is possible for a right to be overridden without a wrong having been done. This may strike some as a weak account of rights, or others as simply counter-intuitive, or yet others as both. To this objection I offer two quick replies. First, this sort of account does not seem too weak or counter-intuitive for many other rights theorists, as we can see in the use to which many have put the distinction between *infringements* of rights and *violations* of them. Many rights theorists claim that infringements of rights occur when rights are justifiably encroached upon, while violations occur when they are unjustifiably encroached upon. The distinction would not be a useful one if it were never permissible to override rights. Second, we might appease those who charge us with counter-intuitiveness by making room for a notion of wrongness in a weak sense. We might claim that even if the child justifiably stole the bread from me, there was still a weak sense in which she wronged me. The bread was mine, after all, and someone did take it without permission. This weak sense of wrongness would be different from the one discussed in 4.2. We might say that we are wronged in a weak sense whenever we have a *pro tanto* reason (not a genuine one) to reject the principles of another agent. But I introduce this weaker sort of wrongness only as a cautious suggestion, and a much closer investigation of it would be required for a full endorsement of it.

We might also emphasise a point that has been implied but not explicitly stated, which is that it is quite possible to be mistaken about the rights one has. This follows from the fact that rights correspond to *pro tanto* R-reasons, not operative ones. If rights corresponded only to operative R-reasons, which do not have to meet any threshold of plausibility, then anything conceivable as a right could be a legitimate right. Thus I might think that I would

have a reason to reject the principles of anyone who deprives me of a hundred courtesans sitting at my feet and feeding me grapes, and therefore have a right to the courtesans in question. But (sadly for me) it seems unlikely that the operative R-reason under consideration would ever have much of a chance of achieving pro tanto status. It is the fact that rights correspond to pro tanto R-reasons, and that pro tanto reasons must reach a threshold of plausibility governed by Scanlon's first level of critical scrutiny, that limits the range of rights, and allows for the possibility that we could be mistaken about our rights.

Staying with the topic of pro tanto reasons, we are now well-positioned to fulfil an earlier promise, which was to discuss why it is that rights correspond to facts about pro tanto R-reasons rather than genuine ones. The answer, which should have become apparent by now, is that a correspondence with pro tanto R-reasons allows rights to be defeasible, because pro tanto reasons are themselves defeasible. Rights could not be similarly defeasible if they corresponded with genuine R-reasons, because genuine reasons are not defeasible. A correspondence with genuine R-reasons would in this respect have two distinct drawbacks. First, it would bring upon us all of the well-known problems with postulating absolute rights. To name just one of these, clashes between rights are almost inevitable, and it is mysterious how clashes between (genuinely) absolute rights can be handled. A second reason to be wary of connecting rights with genuine R-reasons is that it would simply lead us to have fewer rights than we have if we connect rights with pro tanto R-reasons. This follows straightforwardly from the fact that not all pro tanto reasons become genuine, but all genuine reasons are pro tanto. Having relatively fewer rights, and knowing ourselves to have relatively fewer rights, would mute somewhat the beneficial effects that rights have for our self-respect that we saw in the first chapter. We would not have as many opportunities, for example, to assert ourselves through the exercise of rights, and we would not have as many opportunities to exercise control over the duties of others. Admittedly, it could be argued that it would be a rather hollow boost to our self-respect to think of ourselves as right-holders only to have those rights be frequently overridden. But, although Scanlon's notion of reasonable rejectability makes it difficult always to know in advance which R-reasons will be

reasonably rejectable, we can cautiously say that the overriding of rights will generally be the exception rather than the rule. We will see that this is especially the case with regard to universal rights.

It might be helpful at this stage to recap the discussion of (1) and (2) by showing how they work in another example. Let us see how our rights view works this time in the paradigmatic rights example of money-lending. I will demarcate various stages of the example with letters in order to make it easier to discuss in detail. Now imagine that Mary loans John a hundred pounds, which John promises to repay. (a) John's promise gives Mary a right against him to repay the money, because she would have a *pro tanto* reason to reject his principles if he did not repay it. (b) John does in fact violate his promise, and refuses to repay the money. This gives Mary a *pro tanto* reason to reject his principles. (c) Whether her *pro tanto* reason to reject his principles becomes genuine depends on whether there are any competing *pro tanto* reasons that override it. (d) If her *pro tanto* reason does not become genuine, then her right is overridden in this case. If her *pro tanto* reason does become genuine, then her right is not overridden and John has a duty to reject the principles by which he acted.

An explanation of this example constitutes a review of what we have already discussed, so I will take care that my explanation of each point is not overly elaborate. (a) follows both from point (1) in the introduction of the chapter, and from facts about the nature of promising. It is the fact that John has made a promise to repay the money that makes it true that Mary would have at least a *pro tanto* reason (not just an operative one) to reject his principles if he did not repay it. This is because an agent P's promise to ϕ , properly understood, creates a reasonable expectation that P will ϕ .¹³⁷ And from (1) we learn that the fact that Mary would have a *pro tanto* reason to reject John's principles should he go back on his promise gives her a right against him to keep his promise. (b) follows simply from the same facts about promising that we just described in our discussion of (a). In (a) we saw that

¹³⁷ This fact is entailed by Scanlon's treatment of promising, but it is also entailed by many other treatments as well. See Scanlon, Chapter 7, 295-327.

Mary would have a pro tanto R-reason against John if he violated his promise, while in (b) we find that she does have this pro tanto R-reason, since he did in fact violate his promise. (c) is simply a fact that follows from our discussion of contractualism in Chapter 4, and particularly from Scanlon's notion of reasonable rejection. It does not raise any new issues for us to discuss. Finally, (d) follows from (2) above. It notes the way in which the normative force of rights is tied to the reasonable rejectability of R-reasons, a point that I have discussed prior to this example.

Our discussion of (1) and (2), and of how they fit into the contractualist process, has provided a sketch of a new rights view. I think there are several reasons to think this is a strong view, particularly in light of what we have tried to establish previously in the thesis. I will suggest three features of my rights view which I consider to be strengths. First, it enjoys a smooth compatibility with contractualism. It does not attempt to replace contractualism in any way, but rather 'piggy-backs' onto contractualism in a way that utilises the strengths of contractualism that we defended at length in the previous chapter. By seeking to amend and not replace contractualism, we avoid the worry that our arguments in the last chapter have been undercut by the introduction of rights here. In fact, I believe that the introduction of rights into the contractualist picture helps contractualism by Scanlon's own lights. I will make that argument in the next section.

The second strength of my rights view, put in the context of what has come before in my thesis, is that it is consistent with elements of Feinberg's view of rights that I endorsed in Chapter 1. We would be in some difficulty if this were not the case, because my arguments in support of the importance of rights relied on Feinberg's view of the nature of rights. If we were to undercut the Feinberg view at this stage, then we would also call into question our arguments in favour of the importance of rights. But not only do I think that my view is compatible with important elements of the Feinberg view I have endorsed, but I cautiously suggest that my view might help to explain elements of Feinberg's view that are otherwise explained in a less than complete manner. I think this may be true both with regard to Feinberg's view of rights and his view of claims.

As we have seen, Feinberg understands rights to be valid claims. On my view it seems possible to make sense of the idea both that rights are 'valid' and that they are 'claims.' Rights are valid in the sense that to have a right is to have it be true that we would have an R-reason of some validity (namely of pro tanto validity) in a given situation. The R-reason we would have must reach a threshold of validity in order for us to consider ourselves to have a right. As I mentioned, if merely an operative reason were required, then we could have a right to anything at all. My view also seems more specific than Feinberg's, because Feinberg understands validity rather vaguely, appealing to whatever our moral principles would endorse without discussing those principles further. Validity on my view depends on Scanlon's first level of critical scrutiny, by which operative reasons become pro tanto reasons. Admittedly, there is still an element of vagueness about this process of scrutiny, as the questions which comprise it are broad and general.¹³⁸ But the fact that the questions have some content makes them more specific than Feinberg's appeal to principles.

I think my view is also compatible with the idea that rights are a subclass of claims. As we have seen, rights correspond with facts about the pro tanto reasons to reject given sets of principles we would have in given situations. The fact that I know that I would have a pro tanto reason to reject your principles in a given situation, and that this information is available to you as well, gives me a sort of claim on you. This is easy to see if we return to the example of Mary and John. The fact that John has promised to repay the money gives Mary a right against him, because Mary would have a pro tanto reason to reject his principles if he failed to fulfil his promise. Mary thus has a sort of claim over John, because she holds a sway over his future actions. He can defy that sway only at the risk of acting wrongly. If John defies Mary and breaks his promise, then Mary has at least a pro tanto reason to reject his principles, or, to put the matter another way, to complain about his principles. But my account has the advantage of explaining what claiming or complaining entails in greater detail than Feinberg's does.

¹³⁸ We will recall that examples of these questions include 'Am I overlooking something?', 'What kinds of reasons exist apart from the ones I already recognise?', and 'What reasons do particular cases seem

There is another element of the Feinberg view with which mine is compatible. We will recall that Feinberg's understanding of claims is that we have a claim just when we are in a position to make a claim. One advantage of this positional view, as we saw, is that it allows us to speak of agents as possessing claims of which they are unaware. On my view it is also possible for agents to have claims (and rights) of which they are unaware. Whether or not an agent has a right corresponds to the existence of a fact about a pro tanto reason he would have – it does not correspond to whether she *knows* that she would have the pro tanto reason in question. Once John has made a promise to Mary, the fact that she has a right against him does not depend on her awareness of a pro tanto reason she would have. It depends rather on the fact that she would have that reason. To put the matter another way, it depends on the fact that Mary is relevantly positioned to have a certain pro tanto reason should a certain circumstance occur. So although I have not explicitly described rights and claims in terms of the 'position' that agents are in, we can see that my view is compatible with such talk. The difference between my view and Feinberg's is that while Feinberg neglects to tell us the conditions under which we are in a position to make a claim, I do provide those conditions by connecting rights with the pro tanto R-reasons we would have when we feel we have been wronged in the relevant ways.

That concludes my discussion of the compatibility of my view of rights with Feinberg's, which I proposed was the second strength of my account. The third strength is that it offers a picture of rights that has some degree of novelty. There is a particular way in which I think my rights view may offer something new to rights theorists, and in order to understand it we must discuss the way in which rights theories are commonly categorised. As we have seen, Dworkin proposed that moral theories can be split into three categories: those that are right-based, duty-based, and goal-based. Since then it has commonly been held that a corresponding trichotomy applies to rights theories: those that understand rights to be primitive, those that base rights on duties, and those that base rights on goals. Now, we noted in the previous chapter that Scanlon offers a moral theory that is based on reasons, and as

to present?' See Scanlon, 67-68.

such Scanlon's theory seems to elude the categories of moral theories Dworkin proposed. Similarly, because my rights theory relies so heavily on Scanlon's reason-based approach, it seems to fall outside of the corresponding trichotomy of rights theories. Instead of being primitive, or based on duties or goals, rights are on my view based on reasons. Rights are both a subclass of reasons, as I indicated earlier, and are themselves based on reasons (specifically R-reasons). As far as I know, mine is the only rights theory which bases rights on reasons. *Ceteris paribus*, this would appear to give my view some value as an original rights theory.

There may yet be a concern, however, that my reason-based view only appears to be different from the other, more established, kinds of rights views, and in fact ultimately reduces to one of the others. But I do not think this is the case. It should be clear, for example, that rights are not primitive on my account. Rights are a subclass of reasons, a subclass that is derived from another group of reasons, namely R-reasons. It is similarly implausible that rights are based on goals, because goals have had very little role to play in our Scanlonian picture. A more likely scenario is that rights are on my account covertly based on duties, but this too turns out to be incorrect. It might seem to a casual observer that rights are based on duties, because rights are based on pro tanto R-reasons, and genuine R-reasons create duties. Thus there is some connection between rights and duties (as there is on other rights views). But on my view, R-reasons serve as a sort of go-between with regard to rights and duties, and R-reasons are not themselves duties. I have already offered a hint earlier in our discussion of why R-reasons cannot be duties, which is that we can opt out of our rights. Because this is possible, and because rights are connected to the pro tanto R-reasons we would have in certain circumstances, then it must be possible to opt out of R-reasons, which differentiates them from duties. R-reasons are instead best seen as a subclass of reasons of autonomy. So I think that my reason-based view of rights is genuinely reason-based, and does not reduce to a duty-based view.

It may help to clarify the preceding discussion if we are more explicit about the relation that holds between rights and duties. This has been implied in different parts of our

account but never explicitly and comprehensively stated. Now, it is a standard view of rights theorists that rights and duties are both directly and necessarily related. If P has a right against Q, then Q necessarily has a duty toward P, and this relationship between rights and duties is unmediated by other concepts.¹³⁹ By contrast, one of the most surprising aspects of my view is that rights and duties are neither necessarily nor directly related. There are cases in which P may have a right even though Q does not have a duty, such as the case in which John fails to repay Mary but does so for a justifiable reason. Here Mary has a right to be repaid but John does not have a duty (in the full sense) to repay her. We might say that John has a *pro tanto* duty to repay her, but that that *pro tanto* duty is overridden by his other *pro tanto* reason(s). Even when there is some relation between rights and duties, as when John neglects to repay Mary on a whim, that relation is mediated by R-reasons. The fact that Mary has a right is determined by the fact that she would have a *pro tanto* R-reason to reject John's principles should he fail to repay the money. The fact that John has a duty to repay the money is determined by the fact that Mary would have a genuine reason to reject his principles should he fail to repay it. If John fails to repay the money on a whim, then he has a further duty to reject the principles by which he acted, which is determined by the fact that Mary has a genuine reason to reject his principles. Thus there is a sort of connection between rights and duties in the sense that they both spring from R-reasons. But the connection is only a loose one, because P's right follows from a *pro tanto* reason she would have, while Q's duties follow from *genuine* reasons P would have or does have.

It must be admitted, then, that my view features a highly unusual account of the relation that holds between rights and duties, but is this a problem? Some may think that it is, but I am not convinced by arguments they are likely to make. It might, for example, be thought that alternative accounts are preferable on account of their simplicity. But the most widely-considered alternatives, such as the benefit theory and choice theory, are deceptively

¹³⁹ This is not to say that rights theorists agree on exactly how rights and duties are related. The benefit theory, choice theory, and complaint theory are three prominent views on the matter. I do not think my view falls neatly into any of these camps, though of the three it is most akin to the complaint theory. For views of this sort see Joel Feinberg, 'Duties, Rights, and Claims' in *American Philosophical*

complicated, and arguably have yet to be articulated in a satisfactory way. Alternatively it might be argued that by disassociating rights and duties to the extent that I do, I have devised such an odd view of rights that it does not deserve to be called a 'rights' theory at all. My response here is to refer the reader back to the important and fundamental ways that my view is compatible with Feinberg's, and most notably that it seems to capture the central idea that rights are valid claims. I submit that enjoying a necessary and direct connection with duties is not an essential feature of rights because their status as valid claims can be captured in a different way.

I will close the section by considering two more objections to my view. The first concerns a specific claim that I made in two different parts of the section, which was that it is possible to opt out of rights. Certainly, there are many reasons for wishing to have a view of rights that allows us to opt out of them. Feinberg, for example, claims that a world in which no one ever opted out of his rights and forgave others of their duties would be a world of 'bloodless moral automatons.'¹⁴⁰ But there is a question about whether Scanlon's view of irrationality, which I have already endorsed, prevents us from allowing for this feature of rights. We will recall that Scanlon holds that the clearest case of irrationality occurs when an agent's attitudes fail to conform to her judgements about reasons, i.e. when she recognises there is a reason to ϕ but is nonetheless not motivated to ϕ . It could be argued, though, that this is exactly what happens on my view if we opt out of rights. This is because opting out of rights would involve realising that we have a pro tanto or even genuine R-reason against someone, but nonetheless not acting on it. For example, if Mary opts out of her right to be repaid by John, she is acknowledging that she has a reason to complain about the principles behind his refusal to repay, yet implying that she is not inclined to act on this reason. It would appear that, on Scanlon's account, Mary is being irrational here. Must we make the unhappy choice between being bloodless moral automatons and being sometimes irrational?

Quarterly 3 (1966), 137-144; Vinit Haksar, 'The Nature of Rights' in *Archiv für Rechts- und Sozialphilosophie* 64 (1978), 183-202.

¹⁴⁰ Joel Feinberg, 'A Postscript to the Nature and Value of Rights,' 156.

My reply is that there is some cause to doubt that Scanlon's account of irrationality should hold for R-reasons in the same way that it holds for other reasons. We will recall from 4.1 that Scanlon's defence of his view of irrationality is primarily that it accords better with intuition than do rival views. This defence seems to have some plausibility when it comes to personal projects such as the reason I take myself to have to learn how to juggle. Intuitively it is difficult to see how I could consider myself to have such a reason, yet not be at all inclined to pursue the project of juggling.¹⁴¹ It seems quite plausible to call such a person irrational. But Scanlon's view of irrationality does not accord nearly as well with intuition when applied to a failure to act on R-reasons (and, by extension, to uphold rights). Intuitively we may not be inclined to call Mary irrational if she forgives John of his debt. The matter might seem to turn on the particular details of her personal circumstances, such as how badly she needs the money back. But even if she is in dire circumstances and she is declining to uphold her right out of mercy, we may not intuitively be inclined to call her irrational. Indeed, it seems to be the role that values such as forgiveness and mercy play in the failure to uphold R-reasons that makes this failure different from the one we saw in the example of juggling. It seems unlikely, then, that we are committed to saying that the refusal to uphold one's rights is *always* irrational, though I leave open the possibility that it might sometimes be so. This conclusion seems enough, though, to take the sting out of the objection to which we are replying.

The second objection is more general, and poses a deeper threat to our overall view. It is that the account of rights I have offered, whatever its other merits, is not a derivation of rights so much as an *ad hoc* introduction of them. Even if I have presented a plausible view of rights, the argument goes, it is still *ad hoc* because I have not indicated any necessity for it. I think this objection is best answered in two parts. First, there is the issue of whether there is any derivation of rights present in my view. I think there is one, in the sense that rights are a subclass of reasons that follow from other reasons. Specifically, rights follow from R-reasons,

¹⁴¹ Let us assume that there is no great instrumental value to learning how to juggle, e.g. there is not a lucrative job waiting for me at the circus.

and they do so in the way indicated in our discussion of (1). This seems to be in some sense a derivation of rights. But there is still the second part of the objection to answer, namely whether our derivation of rights is simply *ad hoc*. Why are rights needed in morality at all? It is in answering this part of the objection that we touch on (3). (3) holds that the justification for our introduction of rights into contractualism lies in the cumulative weight of arguments in favour of the need for rights. I am not aware of any definitive proof that (3) is correct; I simply do not know of any better way to justify the inclusion of rights. Just as there is no definitive proof that (3) is correct, it seems too ambitious to try to establish any definitive proof that rights are needed in support of contractualism, or even that they are needed in morality generally. We must be content to weigh the arguments on both sides and see which side ultimately outweighs the other.

I have of course already made a substantial beginning to such a project in Chapter 1. We will recall that I concluded then that rights, including but not limited to universal rights, are needed in a proper understanding of moral theory. I think we would not do badly if we simply relied on those arguments to justify our present inclusion of rights in the Scanlonian framework. I stand by the arguments of Chapter 1 and do not wish to suggest that they need to be changed. Nonetheless, it also seems to be the case that some new arguments are available to us when we consider the need for rights particularly within the contractualist framework. This raises the interesting possibility that the inclusion of rights into contractualism improves contractualism by its own lights. This is in fact what I will argue in the next section. So the arguments of the next section are intended to complement the arguments in Chapter 1, and in doing so to add to the cumulative weight of arguments in support of the importance of rights. This will in turn complete our reply to the objection that our rights view in this section has been *ad hoc*.

5.2 The importance of rights revisited

I hold that there are three ways in which Scanlon's account benefits from the introduction of rights. First, the goods that contractualism presupposes, self-respect and respect for others, are best secured only in a morality that includes rights. Second, contractualism tries to fulfil an ideal of interpersonalisation which is better achieved when rights are added to the picture. Third, contractualism has difficulty explaining the disproportionate phenomenological force of (at least some) duties, which is arguably made less mysterious by the introduction of rights. The arguments apply to the revision of Scanlon I made in the previous chapter, but they also purport to apply equally well to a fully orthodox Scanlonianism. I hold out the hope, then, that they may be of interest to scholars of Scanlon, whether or not those scholars favour the revisions I made in the previous chapter.

The first argument is not wholly new, but is really an application of some of our arguments from Chapter 1 to a Scanlonian context. In that chapter I defended Feinberg's moral impoverishment thesis by arguing that the possession of rights is the best way to achieve self-respect and respect from (and for) others, focusing particularly on the connection between rights and self-respect. Now I wish to argue that because self-respect and respect from others are goods that underlie Scanlon's contractualism, the fact that rights help us to best secure these goods makes contractualism-with-rights, *ceteris paribus*, an improvement on contractualism-without-rights, and it does so by Scanlon's own lights. Let us see how the argument works step by step. First, we must establish that self-respect and respect from others are goods that do in fact underlie contractualism. I tried to make this argument already in 4.3, but it is worthwhile to review it. The contractualist formula, or C, demands that we act in ways that others could not reasonably reject, and in doing so it implicitly demands that we be able to justify our actions to each other. This process of justification takes into account not the group as a whole, but each individual. It is impossible to see how we could regard C as valid if we considered respecting others (and receiving respect from others in turn) to be wholly unimportant. So the good of respect from others, at least, underlies C.

And, back in the first chapter, we also noted Feinberg's point that to be fully worthy of the respect of others, it seems that we must respect ourselves. If this is true, then the foundation of C would be unstable without the good of self-respect to strengthen it. So it seems that both respect from others and self-respect underlie contractualism.

The next step of the argument is to establish that self-respect and respect from others are best secured by the possession of rights. I trust that I have done that already in the first chapter, particularly with regard to self-respect. We will recall that that argument focused on the connection that the activity of claiming enjoys with self-assertion, and the connection that rights-holding enjoys with a healthy degree of control over others. So we can move to the next step, which is to argue that any goods which underlie contractualism are better secured at a higher level than a lower one. This step assumes that contractualism is itself valid, which I have tried to argue already in 4.2. To address the main concern of the step, then, we must ask if there is any reason we would *not* want to secure at the highest possible level the goods which serve as the twin bedrocks of contractualism. I cannot see that there is any such reason, as it is difficult to see how there could be such a phenomenon as too much (legitimate) respect for others, or too much (legitimate) respect for oneself. Until a convincing counter-argument is made, then, I will consider it true that we have a reason to secure the two forms of respect at the highest possible level. If our arguments from Chapter 1 are correct, then securing the two forms of respect in this way is predicated on the possession of rights. So it seems that contractualism-with-rights is an improvement on contractualism-without-rights in this respect.

The second argument in favour of rights is that they succeed in carrying out the Scanlonian ideal of interpersonalisation more completely than does contractualism-without-rights. In order to make this argument we must first explain what is meant by the ideal of interpersonalisation, and we must show that this ideal is indeed an important part of Scanlon's project. By the ideal of interpersonalisation I mean the guiding conviction that morality, or at least the most significant part of it, should be understood as fundamentally a project of justifying ourselves to others on a one-to-one basis. Rather than look to external

criteria such as what reason demands of us (as would Kant), or to what an objective point of view would indicate (as would Nagel), a fully interpersonal morality suggests that we should look to the fundamentally social criterion of what we can and cannot reasonably reject from others. Scanlon's account thus emphasises the importance of the relations that our reasons put us in with other agents. I call this emphasis on the interpersonal an 'ideal' because I take Scanlon's account to imply that the more interpersonal a moral picture is, the more correct it is going to be.¹⁴² Since there is no external viewpoint from which to see matters, we should strive to offer a moral picture that takes proper account of the moral significance of all of the nuances of personal interactions.

There is ample evidence that Scanlon holds to something like this ideal of interpersonalisation, and I will be content to point out only some of the more prominent examples of it. The contractualist formula C, which underpins his entire view, demands that we act in a way that others cannot reasonably reject. It demands that we consider the views of others when we act – and not 'others' understood as a monolithic group, but understood as each individual affected by our act. The interpersonal nature of Scanlon's account can also be seen in his account of the nature of reasons. All Scanlonian reasons are agent-relative, or personal reasons. But, as we have seen, some personal reasons of an agent x can give rise to personal reasons of an agent y, which indicates Scanlon's emphasis not just on the personal but on the interpersonal. Also, we find Scanlon eager to emphasise the interpersonal nature of morality in his account of moral motivation, as he does when he claims that we are motivated to act morally not just because we are interested in following rules but because of considerations like 'she's counting on me' or 'he needs my help.'¹⁴³ An important advantage of his view, he contends, is that it can account for interpersonal considerations like this.

I wish to argue now that contractualism-without-rights goes some way toward realising this ideal of interpersonalisation, but realises it incompletely in an important respect. The relevant shortcoming of contractualism-without-rights is found in its treatment of the

¹⁴² For Scanlon, 'correct' in this context means according with the moral phenomenology, as we saw in 4.2. For me it means not only according with the phenomenology but also carrying out the implications

central notion of wrongness. It might seem surprising that I focus on wrongness as a shortcoming of this sort, because I have argued in the previous chapter that wrongness is governed by contractualism, and I have indicated above that C is itself evidence of the ideal of interpersonalisation. Should it not be the case that Scanlon's notion of wrongness is, by extension, evidence of interpersonal concerns? But I think that although there is a way in which Scanlon's treatment of wrongness accounts for the interpersonal nature of morality, there is another way in which it does not. The way in which it does account for interpersonalisation is found in the fact that it demands that we distributively justify ourselves to others. Thus the list of acts that will qualify as wrong is determined by a criterion that is essentially interpersonal. For example, if it is indeed wrong to lie, cheat and steal, the fact that these acts are wrong is ultimately determined by considering what the interests of other individuals are. But there is nonetheless something surprisingly and conspicuously *impersonal* about wrongness on the Scanlon view, which is that although it allows us to speak of committing a wrong, it does not seem to allow us to speak very meaningfully of wronging *someone*. Let us say that Q has acted in a way that is wrong, and that grievously harms P (and only P). P has a reason to reject the principles by which Q acted, but so does anyone else (such as an onlooker) who knows the facts of the matter. Q, in rejecting his own principles, does so on the grounds that they are reasonably rejectable, i.e. that anyone sufficiently well-positioned could have reasonably rejected them. Oddly, even though it is P who has been specifically harmed by Q's actions, P is not in any sort of privileged position to point this fact out, or to demand redress.¹⁴⁴ What is important on the Scanlon view is that Q has committed a wrong, not that Q has wronged P particularly. The lack of emphasis on the fact that Q has specifically wronged P not only strikes a discordant note with Scanlon's own ideal of interpersonalisation, but it even sits uneasily with our common intuitions about morality. Intuitively we want to say that it is (at least sometimes)

of Dworkin's account of the sacred, which I also argued in 4.2.

¹⁴³ Scanlon, 155-156.

¹⁴⁴ Of course, P could be in a 'privileged' position if he happens to be the only agent situated to judge competently on the reasonable rejectability of Q's principles (e.g. perhaps no one else knows about the

morally important not only that someone has committed a wrong *per se*, but that her wrong action has harmed *that particular person*.

It might help to illustrate the preceding argument by returning to the example of John and Mary. Imagine for a moment the interaction between John and Mary in a picture of contractualism-without-rights. When John refuses to repay Mary's money, Mary has (at least) a *pro tanto* reason to reject the principles by which John has acted. But, importantly, so does anyone else who knows the facts of the matter. Although it is Mary alone who has been harmed by John's decision, there is nothing to suggest that this fact has any moral importance. Similarly, John has (at least) a *pro tanto* reason to reject the principles by which he has acted, but not because he might have harmed Mary particularly. Rather, he has this reason because there is a certain plausibility to the fact that he has committed a wrong *per se*. The fact that his act wronged Mary particularly, and would seem to have placed him in a particular relation to Mary as a result, turns out to be unimportant.

I believe that the introduction of rights personalises wrongness in a way that better accords with Scanlon's ideal of interpersonalisation. An implication of our rights view is that whenever P wrongs Q, he violates a right of Q's not to be treated in the relevant way. And, as we saw in the previous discussion, Q's rights are an essential source of Q's respect for himself as well as from others. Each of Q's rights contributes toward this self-respect and respect from others. It follows from these facts about rights on our view that P's wronging of Q is tantamount to P declaring an important source of Q's self-respect and respect from others to be unimportant. By wronging Q, P is implicitly saying to Q and to others that it is unimportant whether Q respects himself or is respected by others. This is a very real sense, then, in which P is not only committing a wrong, but is wronging Q personally. This is especially true when P realises in advance that Q has the relevant right. Let us say, for example, that John realises that Mary has a right against him that he repay the money, and realises that this right is a source of Mary's self-respect and respect from others, yet on a

transaction between P and Q). But this empirical contingency does not harm our general conceptual point.

whom still refuses to repay the money. In this case John is implicitly saying of Mary that her ability to respect herself and to gain respect from others is unimportant to him. This is a personal comment on Mary as an individual. Thus there is a clear sense in which John has not only committed a wrong, but has wronged Mary personally.

It is important to emphasise what this argument does and does not purport to state on behalf of rights. Rights are on my view an amendment to contractualism, not in any way a replacement of it. Thus contractualism is still the mechanism by which we determine which actions are wrong, and it is still the mechanism which gives agents their duties. One function that rights perform, however, is to help to personalise wrongness. They give a conceptual backing to the intuition that it is morally important that we have wronged someone, not just that we have committed a wrong in the abstract. Furthermore, an accounting of this intuition seems to be necessary if we are to more closely fulfil Scanlon's ideal of interpersonalisation. A view of wrongness that takes into account who we have wronged is clearly more personal than one which takes into account only whether we have committed a wrong.

My third argument in favour of rights is both more speculative than the previous two, and less rooted in Scanlon's explicit concerns. I mention it as a possible explanation, but only a possible one, of a phenomenon that is otherwise mysterious. The claim is that rights could help to explain why (at least some) duties have a phenomenological pull that is out of proportion to their actual moral weight. To borrow an example from Nagel and apply it to a slightly different context, it may strike us as mysterious why it feels so wrong to twist the arm of a child, even if the pain would be short-lived and doing so might make the child give us life-saving information that he would not otherwise provide.¹⁴⁵ It seems likely on this example that our pro tanto reason not to twist the child's arm is outweighed by a competing pro tanto reason, yet the realisation of this fact does not take away the great phenomenological unease we feel at doing the arm-twisting. Note that our present concern is not to delineate the circumstances in which twisting the child's arm is actually wrong, but to

¹⁴⁵ *View From Nowhere*, 176. Nagel uses the example in the context of wondering how we can have deontological reasons in the face of strong countervailing consequentialist concerns.

try to account for the mystery of why, regardless of the circumstances, twisting the arm always *feels* so wrong.

Contractualism-without-rights does not seem to provide an answer to this mystery. Scanlon does appeal to phenomenological concerns at various points to support contractualism, as we have seen, but he does not suggest that it helps to explain the great phenomenological pull of some duties, nor is it easy to see how it could do so. To the extent that contractualism-without-rights suggests any substantive position on this matter, it would seem to indicate that the phenomenological force of our duties should always be proportionate to their moral importance. We might infer this from the fact that Scanlon thinks that, as a general matter, contractualism is consistent with the moral phenomenology. But, if there is any plausibility to the problem as I have described it, this substantive view cannot be correct. More prudently, it might be best if we simply understand contractualism-without-rights to be silent about suggesting any view on this subject at all. But silence might itself seem to be a deficiency, because ideally we wish to be able to account for the phenomenological curiosity under consideration.

One way that the disproportionate phenomenological pull of some duties might be understood is to consider it to be the result of a recognition (at least an implicit one) of the rights a given agent possesses. This argument is aided by our previous one, that the introduction of rights contributes to a personalisation of wrongness. If I understand the child to have a right not to have his arm twisted, with all of the facts about self-respect and respect from others this implies, then this could help to account for the unease I feel at the prospect of grabbing his arm and twisting it, even if I feel I would have a very good overriding *pro tanto* reason for doing so. The child, after all, has a right against *me* not to have his arm twisted.¹⁴⁶ To go ahead and twist his arm anyway is feel myself swimming headlong against the stream of his self-respect and respect from others, because it is failing to respect an important source of those goods. It is to face the fact that there is no difference in the importance of his

¹⁴⁶ His right also applies to other people as well. But this does not change the fact that it applies to me as an individual.

enjoyment of the two forms of respect over my own, yet to treat him in a way that I would myself not want to be treated. Justifiable or not, the arm-twisting affects my relationship with the child in a very personal way. It is hardly surprising, then, that there should be a phenomenological fallout from the arm-twisting, a fallout indicative of the cost to the child, even in cases in which I have an overriding *pro tanto* reason to twist his arm. This also helps to explain why my phenomenological unease would not be as great if someone else were doing the arm-twisting. In such a case, it is another person who is undergoing the personal experience I described above, and is altering his personal relationship with the child as a result. It is not surprising, then, that this other person should endure the brunt of the phenomenological impact in this case.

As I have said, this last argument is best taken as a speculative suggestion for a way in which Scanlon's account might be improved with the introduction of rights. It would be more than this if I could demonstrate that rights are the *only* way that the disproportionate phenomenological pull of duties could be accounted for, but I doubt this can be decisively shown. I shall be content to conclude that the fact that agents possess rights is one plausible way in which this important phenomenological fact can be accounted for, and that it seems to be an improvement on any resources that Scanlon has at his disposal to do so. As such, the argument raises another possibility in favour of how contractualism-with-rights can be an improvement on Scanlon's contractualism-without-rights.

More broadly, this brings us to a conclusion of the section. The purpose of the three arguments I have presented has been to add to the case for the importance of rights, a case we started to make in Chapter 1. In this section I have been particularly interested to show how rights can be shown to improve Scanlon's contractualist picture, and do so by contractualism's own lights. By contributing to the cumulative weight of the case in favour of the importance of rights, these arguments have helped us to wrap up the discussion of the previous section, which depends on that cumulative weight in order to justify the view of rights it presents. In the next section I will move from a discussion of rights generally to a

discussion of universal rights in particular. I will discuss the derivation of universal rights, and the content of at least some of these rights.

5.3 Deriving universal rights

This section may seem in some respects to be a sort of climax to the thesis. I have been concerned with the grounding of universal rights throughout the project, and it is at this stage that I will try to offer the most specific account of my own view of how universal rights are grounded. But in fact it seems grandiose to call this discussion a climax, because it is really just a straightforward fitting together of pieces of the puzzle that we have already worked hard to mould. Particularly, the aim of this section is to show how our rights view that is expressed in 5.1 is applied to the shared reasons we discussed in 4.3. Universal rights are on my view derived from shared reasons, and this derivation proceeds along the same lines as the derivation of non-universal rights from unshared reasons. This discussion, then, is intended as an explanation and justification of (4), the last of the points which compose the summary of my view.

Since the conceptual story behind universal rights enjoys so many similarities to the one we have already discussed behind non-universal rights, the best way to discuss it is simply to show how it works in an example. Consider the example of a universal right not to be caused pain. How might we have such a right? If our discussion of 4.3 is correct, we all have a pro tanto reason to avoid pain. This appears also to make it true that we all would have a pro tanto reason to reject the principles of someone who would cause us pain, and this is the necessary and sufficient condition to have a right not to be caused pain. As with non-universal rights, our universal rights are facts about the pro tanto reasons we would have to reject the principles of someone who appeared to wrong us in the relevant way. In other words, they are facts about the relevant pro tanto R-reasons we would have. The difference with universal rights, though, is that everyone would have the pro tanto R-reasons in question. To stay with our current example, it is true of everyone that they would have a pro

tanto reason to reject the principles of someone who causes them pain. This follows from the fact that everyone has a pro tanto reason to avoid pain, which itself follows from facts about the nature of pain that I tried to bring out in 4.3.

Let us see how the derivation works in another example. I suggested in 4.3 that we all have a pro tanto reason to secure various opportunities and resources, among them the good of education. My current suggestion is that this gives us a universal right to education. Our pro tanto reason to secure education entails that we would have a pro tanto reason to reject the principles of anyone who denies us an opportunity to be educated¹⁴⁷, should anyone try to do this. The fact that we would have such a pro tanto R-reason means that we have a right to be educated. It is everyone, not just some people, who have this right, because it is everyone who has the pro tanto reason to secure education. The fact that everyone has this pro tanto reason follows from our discussion of the good of education in 4.3.

The simplicity of these discussions bears out the claim in (4) that the derivation of universal rights is not fraught with special problems. But has this treatment been too quick? Perhaps there is a problem lurking in the shadows after all. I have suggested that a pro tanto reason to secure a certain good x gives us a pro tanto reason reject the principles of someone who would in some way infringe x . This is a different way of obtaining pro tanto R-reasons than the ways we encountered in our previous examples that applied to unshared reasons. In the case of John and Mary, for example, it was the fact that John had promised Mary which gave Mary her pro tanto R-reason against him. Facts about the nature of promising were important to that case. In the case of the child bread thief, it was the fact that the bread was my (legitimate) possession that was important (e.g. let us say I bought it from the local market). Thus facts about legitimate transactions played a role in creating my pro tanto R-reason. But in the case of universal rights, I am suggesting that the fact that I have a pro tanto reason to secure x makes it true that I would have a pro tanto reason R-reason against anyone who violated it. This seems to be a new claim, and we might wonder if it is justified.

The claim is one of entailment. It is that P's pro tanto reason to secure good x entails that a certain fact is true, namely that P would have a pro tanto reason to reject the principles of Q when Q attempts to infringe upon P's attainment, exercise, or continued possession of x . Its plausibility hinges partly on what is meant by 'infringe' in this context. If infringement is construed narrowly to refer only to interference in the securing of x , then I think the entailment relation I am proposing is quite plausible. It is difficult to see how it could be true on our contractualist picture, for example, that I have a pro tanto reason to preserve my life, but that I nonetheless have no reason (not even a pro tanto one) to reject the principles of someone who tries to murder me. This would seem just incoherent. The entailment claim is perhaps more controversial if we understand it to apply to the provision of goods or saving of others. For example, is it true that my pro tanto reason to preserve my life gives me a reason (even a pro tanto one) to reject the principles of someone who refuses to put her own life at risk to rescue me from drowning? By extension, do we have a right to be saved in this situation? This case is clearly more difficult, and I will not attempt to answer it here. I shall be content to understand the entailment relation cautiously, so that the scope of any given shared pro tanto R-reason does not exceed the scope of its corresponding pro tanto reason to secure a certain good x . Thus my pro tanto reason to avoid pain entails that I would have a pro tanto reason to reject the principles of anyone who caused me pain, though it may not entail that I would have a pro tanto reason to reject the principles of someone who failed to save me from being abused.

The defeasibility of universal rights works in just the same way as the defeasibility of non-universal rights. All universal rights are, at least in principle, defeasible. Their defeasibility is governed by whether the relevant pro tanto R-reasons become genuine or not. This in turn is governed partly by intuition and judgement about individual cases. This should all sound familiar from our discussion of (2). As I have already argued in 4.3, the shared nature of shared reasons (and now, by extension, the universality of rights) does not

¹⁴⁷ We will recall that we have been purposely vague about what such a denial would entail. Our right might be merely to non-interference, or, more strongly, it might be to the provision of education. This

necessarily bestow upon them absolute force, or even greater normative force than their unshared (and non-universal) brethren. But even if it is untrue that universal rights *must* have greater normative force than non-universal rights, there is yet some reason to think that they will have greater force, at least much of the time. This is correspondingly true for shared reasons over unshared ones. As we saw in 4.3, shared reasons apply to concerns that are among the most central that human beings have. As such, pro tanto shared reasons are unlikely often to be overridden. By the same token, some of these reasons are more central than others, and are likely to thus be more difficult to override. Considerations that override our reasons to preserve our lives or to avoid great pain such as that caused by torture, for example, will be exceedingly rare. If this is true, then the same comments about defeasibility apply to universal rights.

Just as I offered a list of shared reasons in 4.3, so I will now offer a corresponding list of our universal rights. Since I suggested that my list of shared reasons may not be comprehensive, so I offer the same disclaimer with regard to these universal rights. Consistent with our discussion since Chapter 4, reasons of autonomy should here be understood to be reasons to pursue, attain, secure, or protect the goods in question. Universal rights should be understood to be the reasons we have to expect the goods in question not to be infringed, and to take appropriate action if they are. Although for the sake of simplicity I will not list the relevant R-reasons, keep in mind that shared R-reasons serve as a middle step between shared reasons of autonomy and universal rights. Keep in mind also that the content of our shared reasons of autonomy, and thus the content of our universal rights, is determined ultimately by the implications of Dworkin's account of the sacred, as I argued in 4.3.

Reasons of autonomy	Universal rights
individual lives	life, i.e. not to be murdered
avoidance of pain	not to be caused pain, including torture
health	not to have one's health impeded
respect from others	to be respected by others
self-respect	to be able to respect oneself
personal freedom or autonomy	to enjoy a sphere of autonomy
honesty	to be dealt with honestly
living wage	to be provided with enough money to subsist
health care	to be provided with an adequate level of health care
education	to be provided with an adequate level of education

Note that I have adopted the cautious formulation of non-interference for most of these rights, for the reasons I argued above. The exceptions to this rule are the last three rights, which correspond to reasons of autonomy that we specifically identified in 4.3 as reasons that pertain to access to certain opportunities and resources. I have not ruled out the possibility that, e.g., a right to life might entail a right to be saved when one's life is in danger, but I have not established it either. We will recall as well from our discussion in 4.3 that we have not tried to specify the thresholds that are a crucial part of many of the above formulations (e.g. an 'adequate level' of a given good). Thus, although the rights view I have presented may contain some promise, it does not leave us with a shortage of work to do in the future.

I trust that I do not need at this stage a separate discussion of the importance of universal rights. If it is important that we derive non-universal rights from unshared reasons, then it is also important that we derive universal rights from shared reasons. There is nothing about shared reasons that makes them immune from our arguments concerning the importance of rights. More strongly, I suggested in Chapter 1 some reasons why universal rights are particularly important kinds of rights in a proper understanding of moral theory.

Since I have nothing new to add in defence of those arguments, I will proceed to a consideration of two general objections that might arise to the view I have presented in the chapter.

5.4 Objections

Following on the heels of our extended defence of contractualism in the previous chapter, our account of rights in this one has involved a sort of balancing act. On the one hand, we have been constrained by the need to present an account of rights that remains adequately faithful to the picture of contractualism we defended. If our rights view strayed too far from the basic tenets of contractualism, or if it presented a significant revision of those tenets, then this would call into question the value of our discussion in Chapter 4. On the other hand, there might be a problem with being too faithful to the contractualist framework, insofar as this might indicate that our account of rights is superfluous, and does not do any important work. Contractualism, after all, seemed to be a reasonably comprehensive moral framework on its own. This scenario presents for us a dilemma that can be understood as two objections. The first is that our account of rights has presented too radical a revision of contractualism to be compatible with our defence of the previous chapter. The second is that rights on my account simply do not do enough work to justify their existence, and should thus be disposed of. A consideration of these two objections will serve as a conclusion to the chapter.

Let us first consider the charge that I have presented in this chapter a sufficiently radical revision of contractualism to call into question the value of my extended defence of a more orthodox version of contractualism in Chapter 4. This objection is not one that (necessarily) concerns the coherence or plausibility of my rights view, but rather questions the usefulness of the previous chapter in the context of the thesis. My reply to it is that my rights view has been intended as an amendment to contractualism, not a revision of it. The view of rights I have presented leaves untouched all of the important features of contractualism.

Contractualism is still what determines the wrongness of actions (and, by extension, rightness as well), and it is still the mechanism by which our duties are generated. The contractualist formula C still lies at the very centre of our moral picture, and the contractualist process still involves the same conceptual story that we outlined in 4.2. As a result, everything we argued in Chapter 4 applies to the view I have presented in Chapter 5. To be sure, our rights view has added important elements into the contractualist picture. Rights are a new category of reasons, and they are possessed by virtue of facts that hold about our *pro tanto* reasons to reject given sets of principles, facts that we did not discuss in the previous chapter (although we did discuss the reasons to which they correspond). But the important point to note here is that none of the additions that our rights view makes to contractualism disturbs the original features of contractualism that we defended at length in Chapter 4. So it is difficult to see how our discussion of rights in this chapter can be said to supplant or undermine the discussion of contractualism in the previous one.

But if such a thorough defence can be mustered against the first charge, we might wonder if we are particularly vulnerable to the second one. If rights fit so seamlessly into the contractualist picture, can they possibly do enough work to seem anything other than superfluous? This is the more serious of the two objections against us, because a superfluous view of rights would fail to bring to fruition the conclusions we drew in favour of the importance of rights, and would call into question whether we have fulfilled the promise of the thesis to find a grounding for a credible view of rights, particularly universal rights. Not only is this objection the more serious of the two, but it also seems the more plausible. It gains plausibility from a point I made in my defence against the last objection, namely that rights leave untouched contractualism's role in determining wrongness and generating duties. It is contractualism alone which determines when a given act is wrong, doing so through the notion of the reasonable rejection of principles that underlie moral acts. And it is contractualism alone which gives us our duties. As we have seen, if I act by principles that are reasonably rejectable, then my commitment to contractualism gives me a duty to reject my principles. While this all sounds encouraging for a defender of contractualism, it may seem to

leave a defender of rights in a slightly uncomfortable position. Many rights theorists, after all, think that it is rights that determine wrongness and generate duties. They believe an act to be wrong *because* it violates a right, and they believe people to have duties *because* others have rights. Indeed, many rights theorists believe that these tasks are the most important work that rights do in morality. On my view there is an exact correspondence between P having a right violated and P being wronged, and there is also an exact correspondence between P having a right and some Q having a duty. But rights do not generate wrong acts or duties. We might wonder, then, if we need rights at all.

My reply to this objection is that we do need rights, and we need them for all the reasons I argued both in Chapter 1 and in 5.2. None of those reasons depended on the claims that rights determine which acts are wrong, or that rights generate duties. They did both depend, however, on the claim that rights correspond with wrongness and duties in the way they do on my account. Consider, for example, the argument from the first chapter that the possession of rights is the best way to achieve self-respect. I argued that the exercise of rights, or the act of claiming, increases our self-respect by offering us the chance to assert ourselves in a consistent and confident manner. In order for this to be true, it must be the case that we believe there to be a strong correspondence between thinking we have been wronged and asserting our rights. We also must believe there is a strong correspondence between asserting our rights and having others act accordingly, i.e. having others possess duties and act on them. But nothing on this view requires that the rights themselves shape the normative kind of wrongness, or that rights themselves create duties. My other argument in favour of the connection between rights and self-respect was that the possession of rights gives us a healthy degree of control over the actions of others. They allow us to hold others to their duties or release them, which affirms for us our importance in the moral sphere. Again, what is needed here is an exact correspondence between P's rights and Q's duties. What is not needed, however, is the claim that the rights themselves create the duties in question. The crucial point in both examples is that rights play a vital role that no concepts on an orthodox

contractualist view would play. They provide us with easily identifiable claims against others that affirm our importance in the moral sphere.

Similar points apply to our arguments in 5.2, though different points apply as well. Since the first argument there is really just an application of the arguments above from the first chapter, it does not need to be discussed separately. The second argument, the one which claims that rights help to fulfil the ideal of interpersonalisation, focuses on the relation between rights and wrongness. Here the sting is taken out of the objection more quickly than in other examples, because here rights make a substantial contribution to wrongness. As we have seen, rights do not influence which acts are wrong (as ever, this is determined by contractualism), but they influence the *way* in which those actions are wrong. They personalise wrongness by calling attention not just to the fact that we have committed a wrong, but to the fact that we have wronged someone. We might say, then, that although rights do not determine the shape of the normative kind answering to 'wrong,' they nonetheless determine the directedness of that normative kind. As I argued previously, this is work which would not be done by any other concepts, and it is difficult to see what other concepts *could* do the work in question. The third argument of 5.2 revisits the relation between rights and duties in claiming that rights can help to account for the disproportionate phenomenological pull of duties. Again, this does not rely on the claim that rights create duties, but it does rely on a tight correspondence between rights and duties. Like the previous example, it makes use of the idea that rights do conceptual work that is not done by other concepts, i.e. by personalising wrongness. It is a possible application of the second argument, and its plausibility lends credibility to the idea that rights personalise wrongness.

I conclude that neither of the two objections considered here are a grave threat to the view of rights I have presented. Dealing successfully with both objections involves a difficult balancing act, but I hope to have successfully steered the required middle path. More broadly, this brings the chapter to a conclusion. The project of the chapter has been ambitious: I have tried to present nothing less than a new theory of rights. I shall consider the chapter to have been a success if the view is coherent and has some plausibility, but I do not

pretend that it is free of any problems to sort out in the future. To list just a few examples, more precision could be achieved in describing what kind of reasons that rights are, and how these reasons differ from other kinds. The project of determining the threshold levels of universal rights (e.g. what qualifies as an 'adequate' level of personal autonomy) looms before us, and is a very large project. And I have a lingering suspicion that, despite Scanlon's reluctance to delineate complete conditions for reasonable rejectability in advance, more precision can be achieved regarding the conditions under which given rights are defeated by competing considerations. The view I have presented, then, is really just a beginning, and it has not pretended to be more than that. I hope that the cumulative argument of the thesis, though, has presented it as a particularly promising beginning.

Conclusion

Since the argument of the thesis has already been summarised in the thesis abstract and the introduction, I will refrain from summarising it again here. Instead I will try to address where we stand, at the end of the thesis, in the broader landscape of rights theory and moral theory generally. I have been able to address important and engaging questions about rights, but the need to address these questions in depth has inevitably led me to address other questions inadequately, or not at all. My neglect of these issues has not been intended as a comment on their lack of importance, so I think it is important at least to acknowledge them here and to say a few words about them. After doing so I will offer a few thoughts about the value of my project to the philosophical community.

Several issues touched upon in my thesis deserve a fuller treatment than I have been able to give them. I have, at least in most cases, endeavoured to be honest about this fact when the issues in question were raised in the body of the thesis. Nonetheless it is worthwhile to point them out here and to indicate what sorts of further discussions might be appropriate in the future, given the starting points I have carved out. One of the most important and interesting of these issues concerns the scope of universal rights. It is very much a live debate among believers in universal rights just how 'universal' those rights are. Do they (or at least some of them) extend only to persons, to humans, to some animals, to all animals, to trees, or even to planets? I have suggested that my own view about the scope of universal rights is that at least some of them extend not only to all humans, but to at least some animals as well. But this has been no more than a suggestion: I have not provided an argument in favour of it. I suggested in Chapter 1 that we might govern the scope of universal rights by arguing that a creature is sacred just when it participates in a given

number of Dworkinian processes. My hope is that this suggestion at least has some promise, and indicates a way forward for those interested in the debate about the scope of universal rights. But, clearly, more deserves to be said about this issue.

Though I addressed the defeasibility of rights in Chapter 5, I think this is another issue that merits further exploration. Particularly, I think that more can be said to justify the intuition that our universal rights, though defeasible, will not often be overridden, and that some rights, such as a right not to be tortured, will almost never be overridden. As I suggested in Chapter 5, I think that the explanation for the strong normative force of universal rights lies with the fact that they address concerns that are at the heart of what it is to be human. This is borne out by the fact that they derive ultimately from Dworkin's account of the sacred, which concerns our fundamental value. But, even if this is true, more can be said about the general difference in normative force between universal rights and non-universal rights. If my view of rights has any merit, then I have at least contributed a framework in which to continue a discussion of the normative force of rights generally, and universal rights in particular.

As I indicated in Chapter 5, I have also neglected to specify the threshold levels that compose a crucial part of the content of many universal rights. For example, I have suggested that we have a right to an adequate realm of personal autonomy, an adequate level of education, and an adequate level of respect from others. But I have not tried to specify what the adequate levels in question are. To do so would be a huge undertaking. Or, more accurately, it would be several huge undertakings, as a thorough discussion of the relevant threshold levels for each good in question could comprise a chapter (if not a thesis) in itself. What I have tried to provide is the material for such a discussion, i.e. I have tried to indicate which goods should be included in debates about threshold levels, and why. By emphasising Dworkin's account of the sacred, I have perhaps also pointed to a source that hints at what some of the relevant threshold levels should be. But there is still plenty of room for debate in this area.

Derivative universal rights are another issue that merits a more thorough treatment.

In the final chapter I mentioned these rights, and argued in favour of several rights that can be derived from our rights to the two forms of respect. This discussion followed from our discussion of derivative shared reasons in Chapter 4, and included rights to an adequate level of health and personal autonomy, a right to be treated honestly, and a right to certain opportunities and resources. I argued in favour of these rights on the basis that they could be justified by reference to Dworkin's account of the sacred. Now, it may be the case that more rights might be derived from the two forms of respect through the same avenue of justification. It may also be the case that a good such as personal autonomy might itself yield derivative rights. There are many rights, such as a right to live under a democratic regime and a right to a fair trial, which I am inclined to support but did not mention in the body of the thesis. These rights and others, though, might well be shown to be derived from rights that I did mention. A complete delineation of derivative rights is a project that deserves further attention. I am not certain, for that matter, that I have identified all of the *non*-derivative universal rights suggested by Dworkin's account. But rights to the two forms of respect are at the very least some of the most important non-derivative rights, as is the equally central right to avoid pain.

The issues I have discussed so far have all been issues that I touched upon in my various discussions, but neglected to treat adequately. However, there are some rights issues of great importance which I did not mention even in passing in the body of my work. These have mostly been issues that are conceptually posterior to my project, and involve not the grounding of rights but the instituting or implementation of them. If we take ourselves to believe in universal rights, how might they best be instituted and enforced? Would they be implemented best within existing political structures, or would entirely new structures be more helpful and appropriate? These are fascinating questions, and they are of the highest philosophical and political importance. As I said in my introduction, one reason I have written a thesis concerning the grounding of rights and not their implementation is because I believe that the latter issue is often currently discussed to the neglect of the former. But this

does not mean that I consider the question of how rights are best instituted to be unimportant by any means. On the contrary, I hope that my arguments can help rights advocates to feel more secure that rights (particularly universal ones) are well-grounded, and to shift with confidence to questions of implementation.

Another important question I do not address in the body of my thesis concerns the relation between moral rights and legal rights. This relates to the previous point about implementation, because it seems likely that the effective implementation of moral rights will involve some story about their correspondence with legal rights. Though moral rights are important for all the reasons I indicated in Chapters 1 and 5, still there are some situations in which they are likely to seem hopelessly inadequate without enjoying a correspondence with legal rights. It is an unfortunate fact that there are, and probably always will be, some individuals and groups who care so little for the concerns or even lives of others that they are wholly unmoved by any appeals to moral rights. Against such people we need legal rights and the full backing of the law, with its police, its courts, its jails and perhaps even ultimately its militaries. There is a general recognition among moral rights advocates that this is the case, which helps to explain why human rights advocates currently have such an interest in and optimism about the International Criminal Court. But more should be said about the establishment of a sufficiently tight connection between moral rights and legal rights.

As I said at the outset of the conclusion, I have mentioned only some of the rights issues that I neglected to treat adequately in the thesis. Those that I have omitted here in the conclusion have the dubious honour of having been doubly neglected. But the field of rights is a vast one, and a sufficiently deep treatment of any set of problems is bound to be given at the expense of others. I will take some comfort from the fact that it would be difficult to dispute the importance of the central issues that my thesis does manage to cover. If I am also correct in my suspicion that these issues concerning the grounding of rights have been relatively neglected by rights advocates lately, then so much the better for the usefulness of my project.

I will finish by saying a few words about the value of my project. I am of course not in a very advantageous position to assess the value of something to which I am so close, and which is so personal to me. Nonetheless I will try to identify the various ways in which the thesis aspires to be valuable to the philosophical community, without being so presumptuous as to take a stand on precisely which of these aspirations are fulfilled. I hope that even if the thesis does not succeed in fulfilling all of its ambitions, it does succeed in filling some of its more modest ones, and that this success might be sufficient to justify the time and effort it has taken.

The thesis can be read as operating at several different levels of ambition. It is useful to list these different levels in order from most ambitious to least. Thus the thesis might be seen to attempt

1. to provide what is demonstrably the best possible grounding of universal rights.
2. to provide a strong, coherent grounding of universal rights that enjoys significant advantages over many competitors, and can be understood to be defeasibly the best available.
3. to provide a view of universal rights that merits consideration as one of many available.
4. to provide an interesting discussion of the interfacing of three principal texts, Feinberg's 'The Nature and Value of Rights,' Dworkin's 'What is Sacred?,' and Scanlon's *What We Owe to Each Other*.

Let us consider which of these ambitions the thesis is likely to have accomplished. I began writing the thesis with the aim of trying to accomplish (1), and there may yet be remnants of that aspiration in the way I have expressed myself at various points. But there is good reason to think that (1) is too lofty a goal for a single thesis. It would require that I work out my view in greater detail, considering more objections that might be posed against it. It would also require that I offer persuasive and thorough arguments in support of why I consider my view to be superior to all other groundings of universal rights that have been proposed. That is, I would need to provide a wide-ranging eliminative argument concerning all other rights theories. This project could easily span an entire thesis or two in itself. Certainly, it seems

beyond the scope of a single thesis to provide such an argument in addition to a thorough presentation of an original rights view. I mention (1), then, as a sort of ideal toward which the thesis has worked, but it was always more of an ideal than an attainable goal.

(2) is a more achievable goal, and it is the highest one that my thesis has a realistic chance of fulfilling. Indeed, it has been my stated goal throughout the course of the thesis. The thesis might be said to achieve (2) if it offers convincing arguments in all of its major phases. The thesis would have to be convincing on the subject of the importance of rights (including universal rights), in its critical arguments against other kinds of universal rights views (and its arguments against other objective bases for rights), and in the original rights view it presents, including its defence of the Scanlonian contractualist framework. If it is successful in all of these phases, then we could be said to have a view of universal rights which appears, given the range of views covered in the thesis, to be the best available. Though this is not as ambitious as (1), it would still seem to be a considerable contribution to the rights literature. As I said previously, though, it is not my role to judge whether the thesis has in fact achieved this.

(3) and (4) are possible accomplishments the thesis might claim even if it does not fulfil all of its stated ambitions. (3) may look much the same as (2), but there is an important difference between the two goals. (3) is not concerned with whether the view I have presented is better (even defeasibly better) than rival views – it is concerned rather that my rights view has enough originality to be recognised as a view distinct from others, and enough coherence and plausibility to merit serious consideration. An attainment of (3) indicates that it is at least true that I have presented a rights view that should be considered as one possibility out of many. We might accomplish this ambition but not (2) if it is the case that our original view has promise, but that our arguments against other rights views have been less than fully convincing. While this would be less than ideal, I think it would be far from disastrous. Surely the presentation of a new way to think about rights would still be of interest to rights theorists, even if no reason has been provided to prefer it to other views. At worst, rights theorists might regard the determination of how this new theory fares against

rivals to be a separate project. So although (3) represents a step down from our stated ambitions, I think it would still represent an accomplishment of some merit.

(4) is a relatively modest ambition. I am fairly confident that the thesis manages to accomplish at least this goal. Even if serious problems emerge about the rights view I present, and even if the other phases of the project are equally problematic, it could still be the case that I have pointed out interesting connections that can be drawn between the three texts under consideration. Though the mere establishment of these connections would be considerably less than I have hoped to achieve, it would still seem to be of some value to the philosophical community. To my knowledge, no similar study has been conducted linking the relevant Feinberg, Dworkin, and Scanlon texts, and noting the ways that they can complement each other to suggest a coherent moral picture. I suspect this is partly because the Scanlon text has been published only recently, and partly because Dworkin's argument, as we noted, is made explicitly as an *alternative* to rights-talk, thus seeming to put it at odds with Feinberg's piece. But if I am correct that Dworkin's account of the sacred is nonetheless compatible with the inclusion of rights, then this last point need not worry us. So as long as the three texts under consideration independently enjoy sufficiently high regard from philosophers, a project which brings out their potential interconnections would seem likely to generate some interest.

There are other respects in which my project may be of value that do not fit easily into the hierarchy of ambitions described above. Most of these have been suggested at some point in the body of the thesis. The first chapter, for example, would seem to be of interest to anyone concerned about whether there is a need for rights (especially universal rights) in morality. This is an issue that has been surprisingly under-discussed in the literature since the publication of Feinberg's piece, and my arguments concerning it might be interesting even to those who do not have much interest in the Scanlonian work of my later chapters. My exploration of the relationship between universal rights and moral objectivism might be of interest to philosophers who specialise in meta-ethics, even if they are not particularly sympathetic to rights. And, as I mentioned previously, my work in the last two chapters, and

particularly my comments concerning how contractualism is improved by the introduction of rights, should be of interest to the growing number of scholars taking an interest in Scanlon's contractualism.

As I have said, my greatest hope is that I have succeeded in presenting a new rights view that will be regarded as one that enjoys advantages over others and is worth taking seriously. My priority has particularly been to find a grounding for universal rights that is both sufficiently deep and sufficiently plausible. As I said previously, this project has been more of a beginning than an end. I have indicated in this conclusion several conceptual rights issues that I would like to investigate further in order to fill out my view. If I am able to do this, and to handle the objections that will inevitably come, then I would like to move on to a discussion of how my view is best implemented. It seemed to me at the beginning, and it seems to me still, that the world is in need of this kind of work.

Appendix A

Evil and the Need For Universal Moral Rights¹⁴⁸

The fact that we live in a world that contains evil can hardly be denied. Wanton murder, torture, rape, and various kinds of terrible betrayal are all a part of the human experience, and cannot be easily justified or dismissed by appeals to some allegedly greater purpose they serve. Our world would be better if it contained no evil, yet evil has been with us from our beginnings, and any attempts to eradicate it from the world entirely are likely to seem hopelessly naïve. In fact I do not believe our world will ever be free of evil, but I do think that we can take steps to minimize evil acts, and to offer some hope of constructive redress when evil acts are perpetrated. I would like to suggest one such step that I consider to be particularly important, that of establishing a concept of universal moral rights. I will argue that universal moral rights are essential as a deterrent to, and safeguard against, evil acts, in the sense that they play a significant role in directing us away from evil, and because no other moral concepts can duplicate their work in this regard.

The argument will be made in several steps. First I will defend a version of the moral impoverishment thesis of Joel Feinberg, which states that worlds without moral rights are morally impoverished.¹⁴⁹ I will be particularly interested in defending Feinberg's claim that possessing rights is the best way to secure self-respect and respect for (and from) others. I will then argue that these two forms of respect are essential goods, and that their essential goodness can be seen in the way that they protect us from, and minimize the occurrence of,

¹⁴⁸ This piece has been accepted for publication in the forthcoming *This Unweeded Garden: Evil in Theology, Philosophy, and Practice*, ed. Stephen Morris (Amsterdam: Rodopi, 2002). It has not yet been edited. I have preserved elements of the formatting required by Rodopi.

¹⁴⁹ Joel Feinberg, "The Nature and Value of Rights" in *Journal of Value Inquiry* 4 (1970), reprinted with postscript in Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), 143-155. All page references to this paper refer to the reprinted version.

evil acts. Third, I will argue that all humans share a fundamental minimal value, and that this claim combines with our first claim to suggest that everyone possesses rights. Fourth, I will suggest that at least some of the rights that a given individual possesses are rights that all humans share, because there are universal rights pertaining at least to essential goods. Finally I will argue that universal moral rights gain full effectiveness in practice only when they correspond with legal rights, upheld by a multinational body. The argument is wide-ranging and ambitious, but I hope at least to show in this limited space the structure required of an argument that moves from a consideration of evil to a consideration of universal rights.

I will follow Feinberg in my understanding of the nature of moral rights. Feinberg understands rights to be valid claims, and the validity of claims to be governed by the general moral principles under which we are operating. We have a claim when we are in a (legitimate) position to make a claim, and though Feinberg does not specify what determines legitimacy in this context, a determinant consistent with the rest of his account would be the same principles that govern the validity of claims. Thus our account is not right-based, because principles will underlie rights. It is thus important to our argument that the issue of the importance of rights in morality can and should be kept separate from the issue of whether morality is right-based. We might better understand the distinction between these two issues by seeing them as connected by an entailment relation that works in one direction only: the claim that morality is right-based would entail that rights are essential in morality, but the claim that rights are essential does not entail that morality is right-based. Now, as for universal moral rights, I will understand them to be moral rights that everyone possesses, leaving open the possibility that "everyone" might include only persons, all humans, or even perhaps all humans and some animals. It is the fact that animals might fall within the range of these rights which leads me to prefer the term "universal rights" to the more exclusive-sounding (but more widely-used) term "human rights." Finally, I will understand legal rights to be rights specified by a given legal code, and universal legal rights to be rights specified by a legal code that applies to everyone.

It is important to have a broad conception of evil acts with which to work, even if we must acknowledge that there will sometimes be controversies concerning how its details are worked out in practice. Laurence Thomas suggests four necessary and sufficient conditions that must be met in order for an act to qualify as evil: 1.) The act must be harmful; 2.) The act must have sufficient moral gravity; 3.) The perpetrator of the act must delight in the act's performance; and 4.) The perpetrator must not be animated by understandable considerations.¹⁵⁰ This account seems both to capture and to sharpen our widely-held intuitions about what counts as an evil act. Obviously all four conditions present us with thresholds to meet, and regardless of where those thresholds are placed there will be difficult borderline cases concerning whether given acts qualify as evil. But it seems likely that any reasonable placement of the relevant thresholds will indicate that some acts clearly qualify as evil, and can be recognised as such with little or no deliberation. We need not concern ourselves with fine points of interpretation in order to realise that the Holocaust was evil, that the Khmer Rouge's reign of terror was evil, or that the Hutu genocide in Rwanda was evil. We can recognise the evil of these acts because we can see the pain and suffering they caused, and we can see the complete inability, and often disinclination, of the perpetrators to justify their actions to their victims or others.¹⁵¹

I.

With these preliminary remarks out of the way let us turn to the first part of our argument, which is a defence of Feinberg's moral impoverishment thesis. Feinberg claims that moral rights are essential in a proper understanding of moral theory because we need to

¹⁵⁰ Laurence Mordekhai Thomas, *Vessels of Evil* (Philadelphia: Temple University Press, 1993), 77.

¹⁵¹ For a discussion of pain-infliction as an evil, see my 'The Disvalue of Pain and Pain-Infliction' in *Earth's Abominations: Philosophical Essays on Evil* (forthcoming). For a discussion of justification to others as a necessary condition of right action see T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: The Belknap Press of Harvard University Press, 1998).

think of ourselves as right-holders in order to possess self-respect and respect from others.¹⁵²

A point he does not emphasize as much as he might (but to which I think he would agree) is that the second good, respect from others, is best seen as a conjunction: respect both *from* and *for* others. If it is true that we should all have respect from others, then it is also true that we will need to have respect for others. What are we to think of these alleged connections between rights and self-respect, and rights and respect from others? Derrick Darby points out in his recent commentary on Feinberg that the moral impoverishment thesis can be read in a stronger and a weaker version.¹⁵³ The strong reading would be that rights are the only way to achieve the two forms of respect under consideration, while the weak reading would be that rights are the best of possibly many ways to achieve them. While Feinberg himself may favour the stronger reading, I wish to pursue a defence of the weaker one. It seems empirically true that persons can and do respect themselves and others for many different reasons, and this makes Feinberg's claim on the stronger reading implausible. An adherence to the weaker reading, though, requires that we specify in what sense possessing rights (and being conscious of our possession) is the "best" way to achieve the two forms of respect. I propose that rights are best in this regard because the possession of rights is the most effective means of allowing everyone to achieve these goods that manages to avoid extravagant philosophical commitments.¹⁵⁴ The meaning of these criteria will become more clear in the discussion that follows.

If it is true that rights are the best way to achieve self-respect and respect from others, and if it is also true that both of these forms of respect are as important as Feinberg implies, then our argument requires only that we establish the appropriate connection between rights and one of them. Accordingly, although I do not doubt that rights are in the relevant sense the best way to achieve respect from others, I will focus on the connection between rights and

¹⁵² Feinberg also speaks of a connection between rights and a third entity, dignity. But I omit this good because I cannot see that it plays a role distinct from the two forms of respect mentioned.

¹⁵³ Derrick Darby, "Are Worlds Without Rights Morally Impoverished?" in *Southern Journal of Philosophy* 37 (1999), 397-417.

¹⁵⁴ My concern to avoid extravagant philosophical commitments has its roots both in Occam's razor and also in arguments such as that of W.K. Clifford's in "The Ethics of Belief." See W.K. Clifford, *Lectures and Essays*, Vol. 2 (London: MacMillan and Co., 1879), 177-211.

self-respect. My discussion of this connection relies on an empirical claim that Feinberg makes, namely that persons without rights (or consciousness thereof) tend to develop servile characters. Darby correctly points out that an empirical claim like this cannot be proved by philosophical argument, but I find it too plausible to discard, and think a strong case can be made for it by appealing to further empirical claims that help to explain it. Specifically, I wish to appeal to two psychological facts about humans regarding self-respect: first that our self-respect tends to increase if we are able to consistently assert ourselves, and particularly if we do so believing in the correctness or justness of what we say; and second, that our self-respect is also bolstered by a sense of control we have over our own lives and the lives of others. I contend that the possession and exercise of rights helps both in matters of self-assertion and in matters of control, allowing us to attain and secure self-respect.

Consider first the case of self-assertion. The activity of exercising our rights requires us to assert ourselves, and our belief in the validity of our claims encourages us to do so in a self-confident manner. The consistent acts of such self-confident self-assertion required by the exercise of our rights seems likely to help us to acquire and maintain self-respect. Self-assertion that is consistent and self-confident seems a natural antidote to the insecurities or even despair that come from knowing we are a tiny part of a vast and confusing world. We might think of ourselves as only one person in several billion, or as existing during an infinitesimal span of the universe's time, and the lost and hopeless feeling that can result may seem somehow more legitimate than our everyday feeling of comparative security. From this wider, detached perspective we all sometimes take, our lives can seem absurd and devoid of meaning.¹⁵⁵ By consistently asserting ourselves, and especially by believing that those assertions are ones that others will find important and interesting, we are demanding to be

¹⁵⁵ My discussion here is influenced by Sartre's notion of forlornness in his "Existentialism is a Humanism" in *Existentialism* (New York: Philosophical Library, Inc., 1947), reprinted as "Free Will, Self-Construction, and Anguish" in *Reason and Responsibility*, ed. Joel Feinberg (London: Wadsworth, 1996), 456-463. It is also influenced by Thomas Nagel's concept of the objective standpoint and his discussion of its psychological dangers. See Thomas Nagel, *The View From Nowhere* (New York: Oxford University Press, 1986), Chapter 11.

recognised as important entities. This bears out the truth of Feinberg's assertion that the possession of rights allows us to "stand up like men" and "look others in the eye."¹⁵⁶

In the case of control, it is not so much the exercise of our rights that is important but the knowledge that we have them. As I have claimed, rights give us an important degree of control both over our own lives and over the lives of others. They give us control over our own lives by protecting certain spheres of action. If I have a right to freedom of speech, I know I can express myself as I wish, and that this activity is protected against the encroachments of others. Since my ability to speak freely in such a case is not within the control of others, and it is clearly in *someone's* control, it is in my own control. This assurance of control over my own life gives me a deeper sense of self by assuring me that, at least in the spheres of action to which my rights pertain, I am in a full sense the author of my own actions. It increases my self-respect by assuring me that, in the relevant spheres of action, I am not a pawn subject to the whims of others.

The claim that rights give us a degree of control over the lives of others is closely related to the claim that they give us a degree of control over our own lives; it is really the same issue seen from a different angle. The claim depends on the fact that rights connect very closely with duties: if *x* has a right against *y*, then *y* has a duty toward *x*. The exact way in which rights and duties connect is controversial, but the fact that they enjoy a close connection of some sort is not – in fact, the connection is thought by many to be an analytic truth. The connection yields important consequences for right-holders. Most importantly, a right-holder *x* has a particular kind of power over the person *y* who owes the duty: *x* can hold *y* to the duty in question (thereby exercising *x's* right), or *x* can release *y* from the duty. Our experience of this sort of control, especially on a consistent basis, helps us to see ourselves as significant individuals and to respect ourselves accordingly. It provides an antidote, analogous to the one provided by self-assertion, to the lost or neglected feeling we might sometimes have in the complex and bewildering realm of human relations. The fact that we have a certain power over others is a clear indication to ourselves, and to others, that we are

¹⁵⁶ "The Nature and Value of Rights," 151.

significant individuals who cannot be dismissed as non-entities. We are reminded of this every time we have a right against someone, and others are reminded of it every time they have a duty toward us. Yet there is no danger of any right-holder x falling into a trap of megalomania, because the tables will sometimes be turned, and x will owe duties to y (or someone else). What results from these interactions is a community where each individual can feel like an important entity, yet not fundamentally more important than others.

Being a right-holder thus helps us to maintain and secure our self-respect, and as such it is, in a sense, a reason to respect oneself. But we will recall that our argument requires more than this, for it demands that we establish that being a right-holder is the *best* reason to respect oneself, in the sense that rights are the most effective means of everyone achieving self-respect that avoids extravagant philosophical commitments. The best way to show this is to consider a list of plausible alternative reasons and to show how they are inferior to rights by the standard I have indicated. Accordingly I will discuss five possibilities mentioned by Darby, and add one of my own.

Darby first suggests that the fact that we have a certain social status might be a good reason to respect ourselves, but this suggestion is perhaps his most dubious one. Intuitively, at least, most people would be inclined to regard this basis of self-respect as unacceptably superficial and arbitrary. Surely in order to be a good reason to respect oneself, that reason must make reference to features of ourselves that we generally regard as intrinsic or essential. My reason for having *self*-respect must make reference to my genuine *self*, as I have tried to show that rights-related reasons do. But our social status connects, if at all, only very loosely with our essential selves. Neither Donald Trump nor the Sultan of Brunei are paradigms of human virtue, nor are sufferers of crushing poverty in the Third World necessarily deserving of their fate. While it is empirically true that persons of high social status often have a great deal of self-respect and self-confidence, the question of whether they are justified in doing so is a separate one. Social status depends largely on chance, and thus seems an arbitrary basis for self-respect.

It might be contended, though, that the preceding argument has presupposed a contemporary Western view of the way in which social status is achieved. It is true that Plato, in the *Republic*, offered a vision of society in which an individual's social status was to be directly determined by that person's essential character traits. Even in our own time, the Hindu caste system claims to achieve a similar connection between worth and social status by contending that our social status in our present life is determined by our deeds in our past life. But I do not think either of these counter-examples is particularly convincing. Plato's scheme requires that an outside party make a determination of an agent's essential character traits and then place that person accordingly in society, but this seems too difficult to achieve reliably in practice. The Hindu view would be a promising way to explain social status if only the metaphysical claims it relied upon were true, but the mysteries regarding reincarnation are perhaps too great to be accepted. I conclude, then, that the gap between social status and our essential selves is too great to allow us to accept Darby's first suggestion.

Darby's second suggestion is that our status as human beings gives us a good reason to respect ourselves. This is more intuitively plausible than the first suggestion, and is probably accepted (at least implicitly) by some defenders of human rights. But what is it exactly about being human that is so valuable? Both religiously-inclined and Cartesian defenders of this position might say that humans have souls while animals do not, but like the Hindu claim about reincarnation, this sort of claim about the existence of souls is a metaphysical extravagance I think we should avoid if possible. In claiming this I do not wish to commit myself to a physicalist view of the mind, as it could be that we have souls insofar as we have minds. But if this is the case, it would appear that, contrary to what Descartes claims, higher animals as well as humans would have souls, which would render the argument about souls useless in the present context. Otherwise it is not clear, at least on the face of the matter, in what way being an infant or a severely disabled human (or for that matter even a fully-functional adult) is more "respectable" than being a higher animal such as an ape or a dolphin. To simply assume that humans are more respectable than other animals by their nature is to subscribe to the sort of prejudice Peter Singer has labelled "speciesism."

Darby's third suggestion is that we might legitimately respect ourselves because we are persons. Here we encounter the problem of how personhood is defined. If we define it in terms of the possession of rights (which Feinberg suggests but I am not myself endorsing) then it will only confirm the primacy of rights as the best reason for self-respect. If we define it in any other way then the claim "we should respect ourselves because we are persons" reduces to a claim about respecting ourselves in terms of whatever personhood is defined in terms of. This may reduce to one of Darby's other reasons to respect oneself, such as being human or acting for reasons. If it reduces to something else, then we need to know what that something is, and how it connects with personhood. So I think this suggestion is unhelpful as it stands.

Darby also suggests that the fact that we can act for reasons is as good a reason as any to respect ourselves. I think there is a sense in which this fact is a good reason to respect ourselves, but it is nonetheless not a threat to our claim that being right-holders is the *best* reason to respect ourselves. The fact that we can act for reasons does not suffer from any of the problems we have seen in our previous examples, and indeed there is a sense in which being able to act for reasons allows us to assert ourselves, and to exhibit some control over our own lives and those of others. Being a right-holder, though, allows us to assert ourselves and to exhibit the relevant kinds of control in a more dynamic and prominent way. To take just one example, Burmese peasants may be able to exhibit some control over their own lives by protesting the hardships they endure (and thus acting for a reason), but without rights their punishment will be swift and brutal. This sort of 'control' is clearly very weak, and similar examples can be devised for self-assertion and control over the lives of others.

Darby's final suggestion is that we should respect ourselves because we have the ability to live in accordance with personal or moral standards of conduct. Interestingly, Darby seems to have in mind the sort of principles we have seen are important in Feinberg's account of rights, but he does not indicate that the content of these principles is particularly important. It seems that, for Darby, consistently following any set of principles might be sufficient to legitimately respect oneself. But, at least intuitively, most people would probably

find this unacceptable. It could be argued that Hitler was true to a set of moral principles, but we would not want to say that he would have been justified in respecting himself as a result. It is more plausible to say we are justified in respecting ourselves because we adhere to a *good* set of moral principles. But since rights follow so closely from our principles anyway, to claim that we should respect ourselves because we adhere to a good set of principles seems tantamount to claiming that we should respect ourselves because we are right-holders. Darby's fifth suggestion, then, is either unappealing or insufficiently distinct from our original claim to pose a problem.

We might in addition consider a final alternative that involves religious belief. It seems true that some people respect themselves because they are religious believers, and that this reason might carry a certain intuitive weight that, e.g., social status does not. This reason for self-respect might well seem just as good or better than any alternative to those who hold it. Nonetheless there is still an important respect in which it seems to be not as "good" a reason as being a right-holder, namely that it requires us to believe in metaphysical doctrines for which there is inadequate justification. Religious beliefs require that a believer take a positive position on profound metaphysical mysteries, and the increasing secularization of the world shows that many persons are unwilling to do this. Because the arguments concerning the importance of rights do not involve similar extravagances, they seem superior in the sense that they will seem reasonable to a greater range of persons.

I conclude that being a right-holder is the best reason to respect oneself in the sense that we have specified. We might briefly note that we have also gone some way toward establishing a similar connection between rights and respect from others, though more work would have to be done if the task is to be completed. We might be tempted to say that possessing self-respect is necessary but not sufficient to gaining respect from others, but this claim is called into doubt by the fact that we wish for babies and severely disabled persons, who are unable to respect themselves, to be considered worthy of the respect of others. We will have to wait until the third section of our argument in order to better see how babies and the disabled can be included as beings worthy of respect, and are thus worthy of being

considered right-holders. It is my hope in the meantime that our argument in this section has demonstrated why rights are so important for beings capable of respecting themselves.

II.

Until now we have assumed that self-respect and respect from others are the important goods Feinberg implies they are, but it is time to try to justify this assumption. Feinberg himself offers surprisingly little in the way of this sort of justification, but I propose that these two forms of respect are essential goods in the sense that they are good for everyone, and that their positive contribution to our lives cannot be duplicated by other goods. Put another way, essential goods are those goods that make a unique contribution to the flourishing or well-being of everyone.¹⁵⁷ I will explain in the next section why it is important that these goods apply to every individual and not just some. One way in which these goods make a contribution to our well-being is by minimizing the occurrence of, and offering us redress to, evil acts. Now, it might be true that if there were disvalue but not evil in the world, the two forms of respect under consideration might still be essential in the sense that contribute to our flourishing, for such a contribution could involve more than just the avoidance of evil. But a consideration of the relation of our two forms of respect to evil acts is a particularly clear way to bring out their essential value.

We can see this both from the perspective of the potential evildoer, and from the perspective of the potential victim. Let us first consider the perspective of the potential evildoer. Persons who have adequate self-respect will, everything else being equal, be much less likely to commit evil acts than they would be if they had little or no self-respect. Many wicked acts are fuelled at least in part by a feeling of indifference and even loathing toward the self. This seems especially true of perpetrators of some of the worst kinds of evil, such as

¹⁵⁷ This conception of essential goods is thus similar to John Rawls's conception of primary goods. See John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972), 62. It is importantly different, though, from the various concepts of *intrinsic* goods that have been advanced in the recent

those who go on reckless killing sprees. More often than not it is the plan of these murderers to finish their rampage by killing themselves in a gruesome climax. If potential evildoers had an adequately high level of respect for themselves, it seems unlikely they would be motivated to engage in acts of wanton murder or torture. Even if they lacked much feeling for others, they would regard such evil acts as beneath them, and an affront to their sense of self. While it is possible that an evildoer could have a (no doubt misguided) sense of self-respect, it seems nonetheless true that the possession of self-respect will generally discourage the performance of evil acts.

It is perhaps even more obvious from the point of view of the potential evildoer that respect for and from others would discourage him from committing evil acts. Having genuine respect for others is simply incompatible with treating them in an evil way – it would not allow a person to act in such a way as to fulfill any of the four criteria we examined from Thomas. Respect from others would, like self-respect, help to prevent the sort of raging alienation that often characterizes the psychological states of evildoers. Persons who know they are respected by others are more likely to show respect in return, and less likely to feel a need to engage in the sort of angry and aggressive behaviors that usually characterize evil acts. Respect from others helps us to feel we are part of a meaningful community, and generally we are not inclined to try to damage or destroy that to which we genuinely feel we belong.

We can see the value of our two forms of respect just as clearly from the perspective of the potential victim of evil as we saw it from the perspective of the potential evildoer. Just as self-respect and respect from others help to decrease the chances an evil act will be committed, so they help victims of those acts to achieve redress for their suffering. The self-respect held by victims of evil helps them to have the courage to seek justice in ways that may be painful or even humiliating. I think here of rape victims who prosecute their antagonists even though it means recounting in vivid detail the violation of their bodies, or victims of

torture who do the same. Without adequate self-respect these victims might feel overwhelmed and ineffectual, neglecting any chance to seek justice or perhaps even to share their experiences with anyone. The more self-respect they have, though, the more they are likely to do whatever they can to heal themselves and to seek justice.

Respect from others will similarly help victims of evil to cope with their predicament, to allow their wounds to heal, and to seek whatever avenues of justice may be appropriate and available. It can restore the victim's faith in humanity, and help the victim to feel a part of a community again. Respect *for* others discourages victims from committing crimes of retribution, which are a significant problem in many areas of the world where evil acts recur in a sort of ghastly cycle. Without a strong sense of respect for others, victims of evil are likely to become evildoers themselves, perpetrating on their antagonists (or those connected with their antagonists) what has been done to them. The result is the sort of depressing cycle of violence and evil that we find in places such as the Middle East and Northern Ireland. To have respect for others in this sense is, of course, not incompatible with prosecuting them to the fullest extent, agitating for political change if necessary, and so on. But having respect for others is, as we have seen, incompatible with subjecting them to evil acts such as wanton murder or torture.

Clearly, then, self-respect and respect for others are effective means of minimizing evil acts and helping us to address them when they do occur. The arguments I have made may not apply to psychopaths, but it has meant to apply only to moral agents, and psychopaths are not usually understood to qualify as moral agents. Now, we will recall that we have also claimed that the two forms of respect achieve these goals to an extent that no other goods can duplicate. This is particularly seen in the effects the two forms of respect have on potential evildoers: giving them a chance to respect themselves and others seems the best way to discourage them from committing evil acts. This is not to say that all potential evildoers would actually respect themselves and others even if they realized that they and others have rights. It is only to say there is a chance that some would, and that this chance presents us with the best available scenario for minimising and addressing evil acts. My

emphasis on the two forms of respect is not meant to imply that they are the only goods needed in a full understanding of morality. Just as rights are not the only moral concepts we will need (we will at least need duties, and possibly goals and/or virtues as well), there will undoubtedly be other goods needed in addition to the two forms of respect, such as love, kindness, compassion, etc. Yet it seems unlikely that these goods, either individually or in combination, would be able to duplicate the work done by our two forms of respect in directing us away from evil. Let us take love as an example. We love a narrower range of persons than we respect, and even among those we love we might sometimes commit evil against them (think of a husband who flies into a rage upon catching his wife in bed with another man). The stability and wide applicability of respect make it particularly effective as a safeguard against evil acts, and allow the two forms of respect under consideration to play a crucial role in minimising evil acts, and addressing them when they do occur, that is not duplicated by other goods such as love. I conclude, then, that self-respect and respect for (and from) others are essential goods in the sense I have suggested.

III.

So far we have seen that possessing rights is the best way to achieve self-respect and respect from others, and that these goods enjoy the sort of essential importance that makes the possession of rights essential by extension. At this stage we must begin to make the crucial step from a consideration of moral rights generally to a consideration of universal moral rights. More accurately, we might see this “step” as two separate steps which will respectively try to establish the following claims: 1.) It is essential that everyone have (at least some) rights; and 2.) It is essential that everyone have (at least some of) the same rights. Ultimately our goal is to establish (2), but in order to do so we must first try to establish (1). It may appear that we have already done this by arguing that rights play an essential role in morality, but it might be argued in return that although rights are important overall, some agents do not possess any rights because they are morally negligible. The establishment of

(1), then, requires us to argue that every individual has at least a minimal moral value that cannot be taken away. If we can do this, we will then be in a position to address (2).¹⁵⁸

A helpful place to begin when discussing the value of each individual is with a distinction made by Gregory Vlastos. Vlastos suggests that we should distinguish between two kinds of value possessed by individuals, human merit and human worth. He conceives of human merit as consisting of all the features in respect of which agents can be evaluated. Human worth, by contrast, is the value everyone has simply by virtue of being human.¹⁵⁹ We immediately notice that Vlastos confines himself in this distinction to a consideration of humans; I will stay within the terms of this discussion for the moment, but suggest later in the section how claims about worth might be broadened to include animals. Vlastos's distinction is a useful one insofar as it allows us to account for the great discrepancy in the kind and quantity of attractive qualities agents possess, yet nonetheless preserve the idea that each human being possesses an essential value that cannot be taken away.

Justifying the claim about worth, though, has proven difficult. I am not certain it has been addressed in a satisfactory way, but I will nonetheless defend an account that I think may have promise, namely that of Ronald Dworkin.¹⁶⁰ Dworkin argues that each life is sacred in the sense that it is inviolable, and that this is so because the complex processes that create and shape each life are themselves wonderful and valuable. It is not entirely clear what Dworkin himself understands inviolability to entail, but Vinit Haksar offers the promising suggestion that inviolability should amount to irreplaceability, e.g. we cannot rectify the loss of one life by creating another life, or even multiple new lives.¹⁶¹ This suggestion fits well with the Dworkin account, which holds that the complex combination of processes which

¹⁵⁸ The discussion that follows partially overlaps with a discussion of human worth made in my "The Disvalue of Pain and Pain-Infliction." But I have also revised my view in important ways.

¹⁵⁹ Gregory Vlastos, "Justice and Equality" in *Social Justice*, ed. Richard B. Brandt (Englewood Cliffs, NJ: Prentice-Hall, 1962), 31-72.

¹⁶⁰ Ronald Dworkin, "What is Sacred?" in *Life's Dominion* (London: HarperCollins, 1993), 68-101. Dworkin's argument is made in the context of the moral permissibility of abortion, but need not be confined to that context. There is an irony in the usage to which I put Dworkin's argument, insofar as he presents his discussion of the sacred as an alternative to rights-talk, while I am suggesting that it can be part of the basis for universal rights. But this is no more than an irony: Dworkin's account is not incompatible with rights.

¹⁶¹ Vinit Haksar, "Collective Rights and the Value of Groups" in *Inquiry* 41 (1998), 22.

composes each individual life is unique, and once lost cannot be replicated. What are these processes? Dworkin lists three kinds that compose human lives: the evolutionary natural processes that produce new lives; the complex cultural processes in which human beings participate; and the process by which individuals evolve through the decisions they make. Dworkin believes that these processes apply to groups as well as individuals, so that, e.g., species too can be regarded as sacred. While I believe this claim to be promising, I will myself focus on the implications of his account for individuals. Because each life exhibits the features he lists above, each life is valuable; and because each life realises these features in a unique way, each life is sacred. We know that the processes and their various complex permutations are valuable because we wonder at them. Thus the processes are, in the most literal sense, wonderful.

I find this account promising largely because of its phenomenological plausibility. It seems that we do wonder at the processes, both natural and human, that compose each life. This is why it is possible even for persons of a secular outlook to regard a birth as a sort of miracle: the natural processes involved are so awesome as to inspire a sort of mystical reverence. It also explains why, upon the death of a person who has lived long and achieved much, their life can seem to take on a sort of mythology of its own. The full weight of the processes (especially the human processes) that made up the individual's life can seem overwhelming, and can seem to give that person a towering stature whose dimensions seem greater than human. An advantage of Dworkin's account is that it helps to explain these quasi-religious feelings of wonder to the satisfaction of those who find overtly religious commitments philosophically unacceptable. A more obvious advantage is that it helps to explain the common intuition that each life is of some value.

Dworkin's account of the sacred has been criticised in several ways, most of which I will not address here, but I would like to defend his view against two criticisms which are perhaps among the most fundamental. The first is that it is not immediately clear why the processes Dworkin speaks of can be said to be valuable. At one point Dworkin suggests they are valuable because the products they yield are valuable, but it seems this cannot be correct,

because elsewhere he claims the products are valuable in virtue of the processes that comprise them. To claim both is to be guilty of an unhelpful circularity. Elsewhere in Dworkin's discussion it seems that it is the complexity of the processes that gives them their value. Yet if complexity is a necessary condition for a process being valuable, it seems unlikely to be sufficient. AIDS is complex but we do not consider it valuable as a result. The Third Reich was an enormously complex political entity, but to ask whether it was valuable just seems an entirely separate question.

We might make progress on this issue if we consider more closely the wonder we feel at the natural and human processes in question. Part of what we marvel at does seem to be the complexity of the processes. To participate in such intricate and powerful processes is to feel we are becoming part of something greater than ourselves, and this inspires our awe. But it is also true that we can, to some extent, wonder at the sheer complexity of the Third Reich, abstracting its structural complexity from its moral horrors. The important point, though, is that our wonder at the complexity of the Third Reich seems importantly different from our wonder at the processes Dworkin mentions, and that this reveals something important about why Dworkin's processes are valuable and the Third Reich is not. Any wonder we might feel at the complexity of the Nazi regime is surely only an intellectualized appreciation for its structure and order, recognizing that such strict order might, fashioned in the right way, be a laudable feature of other human pursuits. But our wonder at the processes Dworkin mentions seems something more than this. It may well contain the sort of intellectualized appreciation already mentioned, but it also seems to contain a normative endorsement that is missing from the previous example. We admire Dworkin's natural and human processes because they are not only complex but good for us: like the two forms of respect, they make a special contribution to our well-being.¹⁶² This is why the wonder we feel for them *feels* different from the wonder we might feel at the complexity of the Third Reich. It is the positive contribution these processes make that sets them apart from the Third Reich example,

that explains the normative element of our wonder at them, and ultimately that makes them valuable in a way that the Third Reich is not. But if this is the case, then why do we not similarly wonder at the two forms of respect? It is true that the two forms of respect contribute to our well-being, but they seem to be less complex than evolutionary processes or human participation in culture. It seems to be the case that we wonder at *x* when *x* is sufficiently complex, and that we wonder at it in a full and complete way when (and only when) it is both complex and contributes to our well-being. It is in this way that an examination of wonder helps to explain why Dworkin's processes are valuable.

This discussion leads to a second, related concern, that of limiting the scope of beings whose lives are sacred. So far we have discussed Dworkin's processes only as they apply to humans, but the scope of applicability might be extended further. It is unclear how wide a scope Dworkin himself has in mind; he may envision only human beings as sacred, or he may wish to include at least some higher animals as well. Depending on how we read him, the scope could possibly be much wider, for if a given entity needs only to participate in one of the three kinds of processes he mentions, then even non-living things will qualify as sacred. Not only do humans and animals participate in evolutionary processes, but so do trees, plants, mountains, rocks, and just about everything else. Is everything sacred? This is perhaps going too far. The obvious way in which to limit the scope of sacred entities is to raise the bar of qualification by demanding that sacred entities participate in more of Dworkin's processes than just evolutionary ones. If we require that beings participate in all three kinds of processes, it seems that only human beings will be sacred, and even then perhaps not all humans, for we would need to find ways to include infants and disabled humans. Alternatively we could require that participation in two out of the three processes is sufficient. I will not attempt to place the threshold here, or to deal with the inevitable tricky borderline cases that would arise. My own inclination, for what it is worth, is that all humans

¹⁶² A similar explanation for the value of Dworkin's processes is offered by Linda Barclay, though my argument in support of this conclusion is my own. See Linda Barclay, "Rights, Intrinsic Value, and the Politics of Abortion" in *Utilitas* 11:2 (1999), 215-229.

and at least some animals are sacred in the Dworkin sense. Until it is tailored by further argument, Dworkin's view is compatible with this conclusion but does not entail it.

It is my hope that we have made a persuasive case both for the idea that rights are essential in morality, and also for the idea that each human life is valuable. When considered together, these two premises suggest a conclusion that each human being has (at least some) rights, though admittedly they do not entail that conclusion. The possibility must be admitted that although rights are essential in morality, and although each human life is valuable, there is nonetheless some reason why some humans do not have any rights. But it is not clear what this reason could be. To take just one example, let us say that we believe babies and the severely disabled to be valuable, yet deny that they have rights because they are not rational. Would we really be comfortable simultaneously adhering to the claims that babies are valuable, yet possess no rights, not even a right to life? If such claims are not contradictory, they are at least greatly in tension. Until better reasons to doubt our position are provided, then, it seems safe to proceed on the belief that we have established with reasonable certainty the claim that everyone has (at least some) rights.

IV.

We are now ready to turn our attention to the importance of universal moral rights. In terms of our overall argument we must now move from "everyone has (at least some) rights" to "everyone has (at least some of) the same rights." The first claim alone would not be sufficient for the establishment of universal rights, because it allows for the possibility that everyone has different sets of rights, and that no single right is held by everyone. Now, if some rights are held by everyone, these rights will likely concern the goods we have described as essential. As we have seen, essential goods make unique contributions to our well-being, and this applies not just to some agents but to all. Thus if it is also true that rights are essential in morality, it seems that some rights will be shared by all agents, and that these will be rights concerning the acquisition and/or preservation of essential goods, or goods

derivative of them. Although I have not attempted to give a full discussion of what essential goods there are, I have (directly or indirectly) indicated a few, such as self-respect, respect from others, and individual lives. The latter good derives from our discussion of Dworkin, and might be expanded to include an adequate level of health as well. Other plausible candidates for essential goods might include education, various freedoms, and access to various goods like a fair judicial system. I do not have space to justify each of these goods at length. I am satisfied to make the more general point that, whatever a full account of essential goods turns out to be, it seems there will be universal rights relating to those goods, both because essential goods apply to everyone, and because rights are essential in morality.

This account might seem to present us with a danger of redundancy regarding the goods of self-respect and respect from others. That is, if agents already achieve self-respect and respect from others by having rights *generally* (as we saw in our defence of Feinberg), why must they further secure these goods by having specific rights *to* them? There are two points to note about this apparent redundancy. First, even if it is true, it does not invalidate our argument that there are universal rights which pertain to essential goods. As we have begun to see, there are other essential goods aside from the two forms of respect for which no danger of redundancy will arise. Furthermore, redundancies can be tolerated: it may be conceptually untidy to secure the two forms of respect twice, as it were, but the problem need not be seen as deeper than this.

Second, though, I am not certain the alleged redundancy exists, because specific rights to self-respect and respect from others often seem to do important work that is not done merely by securing the two forms of respect by means of having rights generally. The difference comes out clearly in a case in which I am tortured (which we can say is contrary to the essential good of respecting others). If I have a specific right to receive respect from others, and especially if this right is enshrined in law, I may gain some sort of justice for the agony I have endured. This recompense would serve as a reminder and reaffirmation that respecting others is important. Consider now the other case, in which I have some rights, but not specifically the right to receive respect from others. In this case I will similarly have self-

respect (by virtue of our argument in the first section), but I will not have a similar recourse against my tormentors who fail to respect me. I can point out that they should not have done what they did, and that they should have respected me because I am a right-holder, but I cannot demand specific redress in the way I could in the previous case. The only sorts of recourse I have are those entailed by the specific rights I possess. Put another way, particular rights are performative in a way that the possession of rights generally is not. Thus it seems that universal rights to self-respect and respect from others would do useful work that would not be done by the possession of rights generally, even though the possession of any rights helps to increase our self-respect and respect from others. So the problem of redundancy that we identified seems only to have been apparent, and I take the importance of universal moral rights to have been established.

V.

Before I close I would like to explore the implications for our argument of an important point that Feinberg makes, namely that although rights are necessary in morality, they are not sufficient. There are a number of respects in which rights are insufficient to account for a complete and well-rounded moral theory, some of which we have touched upon. The particular kind of insufficiency that I wish to focus on, though, involves the way that the moral and legal realms relate. Specifically, it seems that moral rights must correspond with legal rights in order to fully protect the goods that inform their content. Especially in the face of great evil, moral rights (even universal ones) are likely often to seem hopelessly inadequate if they do not enjoy a correspondence with legal rights. Even if it can be said that Kosovars had a moral right not to be slaughtered by Milosevic, that Ken Saro-Wiwa had a moral right not to be hanged by Abacha, and that thousands of Chileans had a moral right not to “disappear” under Pinochet, these rights appear not to have achieved much by themselves. Under leaders so diabolical moral rights can be trampled so mercilessly that they seem almost to have never existed. Cases like these indicate that each universal moral

right should be the basis for a universal legal right of similar content. For example, my universal moral right to respect from others should correspond with a universal legal right to respect from others. Just as we will need to determine for the moral right what exactly constitutes respect from others, so will need to tailor our legal right along similar lines. Such a determination will indicate what derivative moral rights (and, correspondingly, what derivative legal rights) there are. Regardless of exactly how our universal legal rights are tailored, we will need them to have all the advantages of a legal system in order to be fully effective. They must be enforceable by courts of law, by penal systems, and ultimately even by military force.

This may seem to raise a new problem of redundancy for moral rights. If universal legal rights are so important, we might wonder if we can do without the concept of universal moral rights after all. But this turns out not to be a great problem. First, universal moral rights still play an important instrumental role, in the sense that we still must have universal moral rights in order to bestow legitimacy upon universal legal rights. This is of the greatest importance, because if we are to have universal legal rights and corresponding global legal institutions, we must take the greatest care not to overstep the bounds of legitimacy in our delineation of these rights. Over-zealousness in such a powerful arena could lead to coercion or even a sort of despotism. The best way to make sure that each of our universal legal rights is legitimate is to insist that it correspond to a universal moral right, which is itself legitimized by reference to our moral principles. To be sure, underpinning universal legal rights with universal moral rights is not the only option available. Utilitarians might believe in universal legal rights, yet believe that such rights are justified by the greatest happiness principle. The problem for utilitarians, though, is that their theory requires trade-offs between individuals that seems, at least in principle, at odds with the Dworkin notion that each individual life is sacred. Admittedly, it seems true that even Dworkin would have to allow for trade-offs between two sacred parties, such as a human being versus a species of animal. Nonetheless our rights view seems likely to involve the sacrifice of fewer sacred beings than utilitarianism would allow.

Second, the instrumental value enjoyed by universal moral rights is not their only value. Even if there were no universal legal rights, universal moral rights would still play an essential role in a proper understanding of moral theory. My broadly-recognised right to self-respect would deter many persons from acting in a way that violates that right, and would convince others that I deserve recompense if my self-respect has been violated. Universal moral rights would still crucially protect essential goods in a way that recognises the fundamental value of each individual. Everything we have discovered about them prior to our consideration of legal rights would still apply. Universal moral rights would still protect essential goods importantly, though they would fail to protect these goods optimally. So it seems that there is no danger of universal moral rights becoming redundant when we consider the usefulness of universal legal rights.

I have argued that universal moral rights are necessary for the well-being of humans, and that this can be seen in the way that they help to minimize the occurrence of, and offer us redress to, evil acts. For those still unconvinced by the argument I have presented I leave a series of questions. How could we better save some of the sufferers of great evil in our time than by having in place a concept of universal moral rights coupled with the effective institution of universal legal rights? What better way would there be to bring their persecutors to justice? How might we have better saved ordinary Chechnyans from being murdered by Russian troops, or Wei Jingsheng from torture and imprisonment in China, or the Tutsis from their slaughter in Rwanda? And a final question to consider. When we think of the greatest evil of the Twentieth Century, our memories are likely to turn back to the Holocaust and its horrific murders, tortures, imprisonments and degradations. We may recall that the reaction of the world community to this litany of atrocities was to try the perpetrators for crimes against humanity and to draft the UN Declaration of Human Rights, reviving an idea of universal rights that had had little currency just a decade previously. Terrible evil and the institution of universal rights: was this more than historical happenstance?

Acknowledgements

I would like to thank Vinit Haksar for his comments on a previous draft of this paper. At the conference I benefited from the comments of Bill Wringe and Jones Irwin.

Appendix B

The Disvalue of Pain and Pain-Infliction¹⁶³

The project of this paper is to argue that pain has essential disvalue, and that it follows from pain's disvalue that pain-infliction has moral disvalue. After establishing these two claims, I will conclude by suggesting some implications of the discussion for pain as a natural evil, and pain-infliction as a moral evil. In the context of this collection, my aim is to do the groundwork for establishing the claim that both pain and pain-infliction can, in some circumstances, be said to be evil. The bulk of my discussion, though, will be in terms trying to demonstrate the disvalue of these things, because this is a prerequisite to claiming they are (sometimes) evil.

The project involves the establishment of two different but related claims. The first is that pain is essentially bad: the disvalue of pain is a constitutive feature of it, and a world without pain would, everything else being equal, be better than our world which includes it. This is a view of pain which has been advanced by Kurt Baier, Thomas Nagel, and Irwin Goldstein, among others.¹⁶⁴ The second is that inflicting pain has at least a *prima facie* moral badness, precisely because such an action brings about or prolongs a state of affairs which has disvalue. So the second claim depends on the establishment of the first one, though it relies on some additional arguments as well, as we shall see.

I begin with two points of clarification. First, in speaking of pain's phenomenological disvalue I will speak of it as being "unpleasant," "awful," and words to this effect. I am not

¹⁶³ This piece has been accepted for publication in the forthcoming *Earth's Abominations: Philosophical Essays on Evil*, ed. Daniel N. Haybron (Amsterdam: Rodopi, 2002). This draft contains Haybron's edits. I have preserved elements of the formatting required by Rodopi.

¹⁶⁴ For Baier cf. *The Moral Point of View: A Rational Basis of Ethics* (Ithaca, New York: Cornell University Press, 1958). For Nagel cf. *The View From Nowhere* (New York: Oxford University Press,

entirely happy with the ability of any single word to capture what we might call the “ouch!” quality of pains. It is an interesting fact about language, and perhaps about pain as well, that we seem to lack the means to speak articulately of pain’s felt disvalue. Nonetheless I will try to speak of it, and we will keep in mind the limitations of the words involved. Secondly, I will assume there is a very close connection between pain’s disvalue and our inclination to avoid it. While I am not *defining* pain’s disvalue in terms of its behavioral manifestations, it nonetheless seems true that, if pain is truly awful, the rational behavioral response to it is to seek its avoidance or relief. David Lewis suggests that a madman might respond to a pain sensation not by seeking its avoidance but by concentrating on mathematics, crossing his legs and snapping his fingers.¹⁶⁵ I do not know whether there could be such a man or not, but as long as we can safely call him mad he does not pose a problem for us, because I have suggested that attempting to avoid pain is a *rational* response to feeling pain, and madmen are by definition irrational.

My ethical discussion will, following Nagel, Parfit and T.M. Scanlon, be made in terms of what *reasons* we have for action.¹⁶⁶ I will also make use of their distinction between agent-relative reasons (reasons possessed only by a specific agent or group) and agent-neutral reasons (reasons possessed by anyone). Agent-relative reasons for pain avoidance and relief are much easier to establish than are agent-neutral reasons. We can see this clearly in the case of pain relief. Let us say I have a pain which I find awful and wish to be rid of. I certainly think I have a reason to be rid of it, and it is difficult to see (except perhaps in very special circumstances) how this reason could be morally unjustified – it would be a strange morality indeed which told me I am not justified in removing the hand I have accidentally placed on a hot stove. So I can be said to have an agent-relative reason to relieve the particular pain I am feeling. This pain is awful *for me*, so I have a reason to alleviate it. Similarly, if I find all pains

1986), 156-162. For Goldstein, cf. “Pleasure and Pain: Unconditional, Intrinsic Values” in *Philosophy and Phenomenological Research* 50:2 (1989), 255-276.

¹⁶⁵ Cf. David Lewis, “Mad Pain and Martian Pain” in *Readings in Philosophy of Psychology, Vol. I*, ed. Ned Block. (Cambridge, MA: Harvard University Press, 1980), 216-222.

¹⁶⁶ For Nagel cf. *op cit.*, 152-156. For Parfit cf. *Reasons and Persons* (Oxford: Clarendon Press, 1984). For Scanlon cf. *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998).

to be awful, it can be said that I have a reason to relieve them all, and that pain, in a general sense, is bad for me.

Pain, then, is bad for those who dislike it. But this sounds like such a commonplace it is perhaps not very interesting. A more engaging (and difficult) project is to try to determine whether pain is bad not just for certain individuals, but in itself. If we can make such a general claim about the nature of pain, then there is some hope that we can make a correspondingly general claim about the moral wrongness of pain-infliction. Put another way, we are seeking to discover whether there are agent-neutral reasons to avoid pain, and to refrain from inflicting pain.

But first another clarification. The phrase "pain has essential disvalue" could yield at least two possible meanings. It could mean that the phrase "pain is bad" is analytic, i.e. that it is part of the meaning of the word "pain" that disvalue is included. As intuitively appealing as some may find this claim, I would not know how to establish its truth, and, as we shall see, some people do in fact feel comfortable speaking of pains they do not mind. So there is some reason to doubt that the awfulness of pain could be part of pain's meaning. Rather than going the linguistic route, I think we should favor the metaphysical one of attempting to demonstrate that the disvalue of pain is an essential feature of it. If pain is any sort of entity at all, it must have constitutive features, and perhaps unpleasantness can be shown to be one of them.

If we are to succeed in showing this, though, we will have to find a way to counter the sort of view advanced by Hare.¹⁶⁷ Hare believes that badness is not only a contingent property of pain, but it is a property not always manifested. That is, he thinks it is perfectly possible to conceive of a pain which is not unpleasant, and cites examples we experience of this sort of "pain." He thinks that if I lightly drag the point of a pin across my skin, I will feel pain, yet not consider that pain unpleasant. He calls this pain-without-unpleasantness "pain₁" and pain-with-unpleasantness "pain₂." He thinks that pain₂ pains are composed of

¹⁶⁷ Cf. R.M. Hare, "Pain and Evil" in *Aristotelian Society Supplementary Volume* 38 (1964), 91-106. Some may wonder why I focus on this old chestnut when so much has been written on the subject of

both a “bare sensation” (which I will simply call a sensation) and a quality of unpleasantness, while pain₁ pains are composed of the sensation alone. The constitutive feature of pain for Hare is not unpleasantness but the sensation or limited range of sensations which all pains share.

The first point to note in response is that an equally coherent story can be told in Hare’s terms about unpleasantness being a constitutive feature of pain. There seems little doubt that many people could perform Hare’s needle experiment and not find the experience unpleasant, but the example does not demonstrate what Hare wishes. The bare facts of the matter can be described in this way: when I drag the tip of a pin across my skin, I feel a certain sensation but no unpleasantness, and the sensation I feel resembles the sensation I would feel if I pressed hard enough to draw blood. The only phenomenological difference seems to be that while the light dragging of the pin is not unpleasant, the deeper cut is. But these facts alone do not give us any reason at all to call the first scenario an instance of pain. We could say with equal coherence that only Hare’s pain₂ is actually a case of pain, and that pain₁ is something other than pain. Hare admits that in psychological case studies there is no consensus to be found on what people call instances of his pain₁. Some call it pain and some do not. Hare thinks he can fall back on another argument: that as long as we can imagine an instance of pain without unpleasantness then such a thing must be possible, and disvalue cannot be a constitutive feature of pain. But Hare’s strategy here of appealing to whether we can imagine *x* to demonstrate possibility of *x*’s existence has since fallen out of favor, as it seems that we sometimes think we can imagine things we really cannot.

At this point we have two equally plausible stories about pain with no clear way to choose between them. Some thinkers, including Dennett¹⁶⁸, have despaired that we are stuck here, and that there is no way to resolve the matter. But I think that even if we may not be able to decide the matter with absolute certainty, there is some reason to favor the view that unpleasantness is a constitutive feature of pain. As we have seen, Hare thinks that a pain

pain since its publication. I think it still stands as a paradigmatic treatment of the badness of pain, particularly of the position I wish to oppose.

consists essentially of only a sensation. There are two ways we might interpret this thought. It might mean that all pains share the same sensation, or it might mean that pains are characterized by a specific range of sensations. Since it is easy to devise examples of different pains which have different sensations (for example, a dull toothache versus frostbite), the only plausible interpretation is the second one. But is it true even that the sensations of pains fall within an identifiable range? It is difficult to see what the sensations of getting jabbed with needle, having a dull ache in my back, and getting scalded by boiling water have in common. But these experiences do have one thing in common: they all hurt!

I suggest it is more plausible that we think of pains as being composed of both a sensation and a feeling of awfulness. But obviously we must speak of sensation in a different way than Hare does if we are to avoid the problem he faces. The way we can do so is to say that the necessary conditions for pain to be pain are that it be composed of any sensation accompanied by a feeling of dislike. There is not a pressing need for our class of pains to be held together by a limited range of sensations, because our class is already limited by the fact that pains must have a quality of awfulness. So although we have allowed that pains can have any sensation, it by no means follows that any feeling we have will qualify as a pain.

I should emphasize at this point that I am only trying to sketch the necessary conditions for pain. The sufficient conditions are a different matter, and are in fact a very difficult problem which I avoid with some relief. It remains to be worked out, for example, why we are inclined to differentiate bad itches, or feelings of nausea, from pains. Both meet my necessary criteria for pain, yet my intuitions accord with those of most other persons in telling me that these feelings are somehow different from pains. The way in which they are different remains to be worked out, but doing so will not be part of my project. Admittedly, it could be that itches and feelings of nausea turn out to be differentiated from pains by a consideration of sensation alone, but it is far from clear this will be the case. Another possibility is that these phenomena are distinguished at least in part by a distinct quality of

¹⁶⁸ Cf. Daniel C. Dennett, "Why You Can't Make a Computer that Feels Pain" in *Brainstorms: Philosophical Essays on Mind and Psychology* (Hassocks, Sussex: Harvester Press, 1978), 190-229.

awfulness each possesses. It may well turn out to be that a correct account of pain's sufficient conditions will not present any problem for my account of pain's necessary conditions.

I think, then, that we have some reason to prefer the view that unpleasantness is an essential feature of pain. But this claim may yet be too strong. It seems possible that unpleasantness is a contingent feature of pain, but happens always to be manifested. Perhaps in some possible world it is not manifested, or perhaps in our own world there may at some future time be pains which are not unpleasant. I do not know how to prove that the proposition that pain is contingent is false. But it seems safe to say that if the most coherent explanation of pain involves the claim that all pains are unpleasant, then the connection between pain and unpleasantness is more likely than not to be an essential one. So with this proviso in mind, I will continue to speak of the connection as essential.

One feature of this account of pain that some may find curious is that it clearly makes room only for *physical* pain. This may seem troubling, because we do often speak of emotional pains: the pains of grief, betrayal, longing, embarrassment, etc. In fact, many people would undoubtedly say that these emotional distresses are the greatest pains of all. I do not, of course, deny that negative emotional experiences are a part, indeed a central part, of human experience – but the problem then arises of how to justify my claim that the only real pains are physical pains. One way out of the problem would be to take a materialist stance, and claim that emotional experiences are merely physical events anyway. But there is a less ambitious alternative we might prefer. It seems we can still speak of emotional pains on my account, provided that when we do so we understand ourselves to be speaking of pain in a metaphorical sense. When we say we feel the “pain of despair” we are saying that our despair causes us to feel something very much like the physical sort of pain (sensation plus disvalue) detailed above. Of course, it is possible that certain strongly negative emotional experiences will be so bad that they cause us to have real physical pains, and any reference to these manifested feelings as pains would be literal, not metaphorical. But negative emotional experiences which fail to yield feelings which have both sensations and feelings of disvalue

are not (literally) pains, nor do they (literally) produce pains. To say this, though, is not to discount their importance or belittle their awfulness.

At this point I will consider five objections to my claim that badness is a constitutive feature of pain. The first is that a defender of the essential badness of pain cannot explain the existence of the masochist. I have suggested that if pain is truly bad then every rational person will try to avoid it. Yet it is a fact about the world that some people do (in at least some circumstances) seem to pursue pain and find it pleasurable, and at least some of these people are not obviously irrational. This seems to point us back to a view of pain more like the one expressed by Hare. But although it may seem self-evident that masochists pursue pain for its own sake and find it pleasurable, a story of at least equal plausibility can be devised which gives the masochist's motivations more complexity. It seems possible that the masochist is not really pursuing pain as an ultimate end, but is pursuing pleasure only. It is possible the masochist can achieve certain pleasures only by experiencing pain, because pain experiences are essential means to certain psychological states such a person finds enjoyable. In a response to Hare's paper, P.L. Gardiner suggests what two of these states might be: perhaps feelings of guilt are assuaged by the pain experience, or perhaps the seeking of pain is an attempt to transfer responsibility to the punisher.¹⁶⁹ Undoubtedly other possibilities exist along these lines. The crucial point is that the existence of such a psychological state, though pleasurable and brought about by pain, does not entail that the pain which is a means to it is pleasurable. It makes sense to say that the pain is bad because it is unpleasant, but that the experience as a whole (which we will for now call the pain plus the resultant psychological state) is one the masochist finds valuable, because the value of the resultant psychological state outweighs the disvalue of the pain. Perhaps someone might think this last point shows that the masochist's pain is actually valuable after all, because its instrumental

¹⁶⁹ Cf. P.L. Gardiner, "Pain and Evil" in *Aristotelian Society Supplementary Volume* 38 (1964), 107-124. It is interesting that the general picture of the masochist I have advanced is reported by Virginia L. Warren to have become the mainstream view among psychiatrists by the mid-1980's. Cf. Virginia L. Warren, "Explaining Masochism" in *Journal for the Theory of Social Behaviour* 15 (July 1985), 103-130.

value outweighs its essential phenomenological disvalue. This brings us to an issue I will take up in my responses to later objections, so I will delay comment until then.

I think this picture of the masochist is to be preferred to one which might emerge from an account like Hare's. If he delved more deeply into the implications of his view of pain for masochism, Hare would find himself faced with two equally unattractive alternatives. He might say that the pains the masochist pursues are all instances of pain₁. That would allow him to say that there are at least some cases in which the masochist finds the mere sensation of pain pleasurable. Perhaps the masochist even feels some pains as pain₁ which other people would feel as pain₂. But although this is possible, it seems to take all the sting out of masochism (so to speak). Do we really wish to say that it is only the *sensation* of being hit with the crack of a whip that the masochist craves? Or is it perhaps necessary that such a person feels pain in the sense of pain₂ in order to satisfy certain desires? We ordinarily think of the masochist as seeking an experience of pain₂, and indeed I think this is the only plausible way of seeing the issue. If sensations alone were being pursued, then the masochist would most likely seek out many which are not ordinarily thought of as unpleasant, and pursue them for the same reasons that sensations ordinarily conceived as unpleasant are pursued. But there is no evidence the masochist does this.

Alternatively, Hare could say that the masochist does indeed pursue experiences of pain₂, and finds such experiences pleasurable. But this seems just incoherent. It is mysterious (to me, anyway) how anyone could find pleasurable an experience which is genuinely dislikable. This would mean the same experience is found to be simultaneously pleasurable and unpleasurable, which seems impossible. There may be some hope of salvaging this line of argument by appealing to second-order considerations. We might be able to say that the masochist's pain experience involves simultaneously a first order displeasure and a second-order pleasure. But I do not know if we can make sense of the concept of second-order pleasures.

I will now turn to the second objection, which is that the testimony of some patients who have undergone lobotomies suggests that there are such things as pains which we do not

find unpleasant. When a patient receives a lobotomy, all (or at least most) subsequent “pains” are felt by that patient only in the sense of what Hare would call pain_1 . That is, a lobotomy patient feels the sensations of pain in their full intensity, but without the dislike which would normally accompany them. Interestingly, many of these patients are inclined to speak of such experiences in terms of feeling pains but not minding them, which seems to support Hare’s view. But while I admit this fact about lobotomy patients does not favor my view, but I do not think it favors Hare’s very strongly either. Not all lobotomy patients speak of feeling pains which are not unpleasant: many do, but not an overwhelming majority. Of those who do speak of feeling such pains, there might be some reason to doubt their word. Although I am otherwise happy to support the thesis that people are incorrigible about their own pains, there might be some reason to doubt incorrigibility in the case of patients who have undergone such a traumatic experience as a lobotomy. Also, as I have argued, I think the conceptual story which supports my own view is independently stronger than the one behind Hare’s, and if I am right about this then the burden of proof is rather high in the lobotomy case. That is, I think the testimony of lobotomy patients would have to support Hare’s view overwhelmingly in order to cause undue concern.

The third objection is that the fact that some people pursue pain as a means to a worthy end shows that at least those pains can be valuable. An example might be someone who goes on a hunger strike to protest oppressive government policies. Such a person suffers the pains of hunger, yet these pains are valuable as a political instrument. In fact, it may well be that the instrumental value of these pains far outweighs their essential disvalue, so can we not say that the pains are good in an overall sense? I think that if we were to do so we would be locating the value in the wrong place. Certainly, something is valuable here, but is it really the pain itself? Value is located in the situation the hunger striker wishes to bring about (e.g. bringing about a change of government policy). There is also value in the particular relation this person’s hunger has to the state of affairs at which it aims, and it is this value we are referring to when we talk of the hunger’s instrumental value. But the *pain itself* is no more valuable than any other pain. To say, then, that the pain of the striker’s hunger has

instrumental value is just to say that it enjoys a certain valuable relation with a state of affairs which is itself valuable (indeed, it seems the value of the relation is derived from the value of the state of affairs). The only way the value of the relation could say anything interesting about the value of the pain itself is if the relation is a necessary one, and obviously this is not the case – we can think of examples of any of these means-to-an-end pains which are clearly bad. In fact, the very instrumental effectiveness of pains like the hunger striker's depends on the fact that the pains will be perceived as having disvalue. If no one thought the pains of starvation were bad, no one would likely be moved by this sort of protest.

A fourth objection is that some people who are not clearly masochists pursue pain for deeply considered reasons, and that their pains can be said to be valuable. For example, some ascetics choose to lead a life of hardship, deprivation and pain. They seem to be different from both the masochist, whose reasons for pursuing pain are usually sexual, and the hunger striker, who would choose a less painful form of protest if it was likely to succeed. The reasons of the ascetic for choosing pain seem to be tied quite closely to a considered judgement about the human condition. Conceptually speaking, though, I think the ascetic inevitably falls into the camp of either the hunger striker or the masochist. Many ascetics (e.g. monks) live as they do because they believe themselves to be following strict guidelines set down by religious authorities, and as such they believe that their life of pain will yield rewards in another life. Of course, a cynical view of their activities suggests that they are living a life of pain only to receive a reward, and that if their religion allowed them to live in an easier way they would gratefully accept. Obviously in this case their pain experiences would have the means-to-an-end quality of the pains of the hunger striker. But even if we take a less cynical view and claim that (at least some) monks believe in their hearts that a life of pain is a holy one, this may not change the fundamental point. It seems their positive valuation of pain would still be informed by a religious context which promises them salvation. Many would not value pain if they did not also believe in other elements of their religious framework (such as salvation).

Now, it is possible that there are monks who would live a life of pain and hardship even if they were convinced of the untruth of salvation. Similarly there may be ascetics who seek out some forms of pain and who choose asceticism for non-religious reasons. Many would be uncomfortable calling such people masochists, because, as I have mentioned, the term masochist is usually used to refer to someone who pursues pain as a means to sexual pleasure. The ascetic may seem radically different from the masochist, because the ascetic pursues pain for deeply-considered, perhaps mystical, reasons. Yet I think that, for our purposes, these non-religious ascetics (and hardened monks) fall conceptually into the masochist's camp. They pursue pain for the sake of something else, such as a moral ideal or psychological state, they cannot obtain by any other means. The fact that the masochist is after sexual pleasure while ascetics are pursuing some other end is not relevant to the argument, so our initial inclination to call the masochist and the ascetic strange bedfellows proves to be unfounded.

I have saved what is perhaps the most common objection for last. It is that pain cannot be a bad thing, because it serves as a useful warning about serious dangers to one's health. The pain of cutting my skin, for example, is said to be a good thing because it keeps me from cutting myself too often or too deeply and losing too much blood (or perhaps exposing myself to infection). The pain I have in a certain muscle when I overexert myself is said to be good because it calls my attention to the fact that if I strain the muscle further, I might do serious damage to it. The pain of a headache at the onset of the flu is good because it causes me to be more restful, which helps to prevent me from becoming more ill.

I do not think anyone would dispute the fact that pains do often have this sort of instrumental value, and we might further think there is something about this general instrumental value of pains which makes this case different from the ones we examined in the third and fourth objections. The connection between pain and usefulness here seems so close that we might wonder if it is a necessary one. If pains are necessarily useful, then it seems unlikely we can call pain essentially disvaluable. But the connection between pain and usefulness cannot be a necessary one, because it is clear that not all pains have instrumental

value. For example, sometimes we have rather ordinary aches or cramps which do not serve as any particular warning to us. The case can be more extreme: think of the intense pain which might be suffered by someone who has acute arthritis. This pain does not seem to serve any purpose which helps to guide the sufferer's behavior. Even pains that have some connection with instrumental value, such as the pains of a burn victim, might present us with a case in which the phenomenological disvalue of the pain is far more intense and prolonged than it needs to be to have instrumental use.

It is clear, then, that the supposed instrumental value of pain turns out to be a value which applies contingently, and to only some pains. So, as in the case of the religious ascetics of the fourth objection, the useful pains of the fifth objection ultimately cannot escape the argument we advanced in the context of the third objection. For pains that have instrumental value, the value of each pain is located in the relation it has to a particular fact or set of facts. For example, the instrumental value of my pain when I cut myself arises from the relation of the pain to various facts: the fact that the cut causes me to bleed; the fact that a deeper cut would cause me to bleed more; the fact that if I bleed too much I will die, and so on. There is an interesting way, though, in which this conceptual story differs from the one we told in the case of the hunger striker. In that example, the value of the relation between the pain and the fact or set of facts with which it was connected (the bringing about of a change of government policy) depended on the positive value of the fact or set of facts itself. But in our present example, the value of the relation depends on the *disvalue* of the facts with which it is connected: bleeding excessively, getting infected, dying and the like are all bad things. This difference follows from the different roles that pain is playing in the two examples – in the first instance of bringing about something good, in the second one of warning us about something bad. But the important point is that, in both cases, the value that some might think to be in the pain itself is actually located in the relation the pain has to a fact or set of facts.

The way I have defended my position, though, may lead to yet another objection, one which combines a representationalist theory of pain with evolutionary considerations.¹⁷⁰ It might be argued that humans (and other animals) have evolved in such a way that pains are *essentially useful* as representations of disturbances in the body. Pain cannot be bad, because the very purpose of pain is to alert us to bodily disturbances or damage. The objection contends that I have made too much of the exceptional cases in which certain pains are not useful. Representational theory entails the possibility of misrepresentation, and thus the possibility of pains which are not useful. Furthermore, biologically our pain system is a natural system, and natural systems are imperfect, so not only are useless pains conceptually possible – they will in fact sometimes occur. The objection's point, though, is that pains are good because they are essential to playing the helpful role that they play. That is, the job pains perform is vitally important, and they must have phenomenological disvalue to do this job.

But it is not clear, to me anyway, that we need something unpleasant like pain in order to carry out the function pain does. Do warnings about bodily damage need to be awful (and sometimes even unbearable)? There would certainly be a problem if such warnings were pleasurable, insofar as such a scenario might lead us to seek out experiences which are actually detrimental to our well-being and survival. But perhaps warnings about bodily damage could be sensations which are neither pleasant nor unpleasant. Admittedly, there is a danger that such sensations would be less noticeable than disvaluable ones, but we could solve this problem by saying that our warning sensations could be value-neutral yet utterly unlike any other sensations. Even if this point is granted, some might insist that we still need the unpleasantness of pain as a sort of paternalistic feature of our biology, to guard against a natural carelessness or even self-destructiveness in our behavior. I am not sure there is actually such a carelessness which resides in our nature, but even if there is, the argument is not clearly successful. A world in which we cause ourselves more bodily damage

¹⁷⁰ For a representationalist theory of pain, cf. Michael Tye, *Ten Problems of Consciousness: A Representational Theory of the Phenomenal Mind* (Cambridge, MA: The MIT Press, 1995), 111-116.

but feel no pain is not clearly worse than one in which we cause ourselves less damage but suffer quite a bit of pain. In fact, it might well be better. The comparison would undoubtedly turn on just how much bodily damage, versus how much pain, we are talking about, and devising the weightings might be a complicated task. But I, for one, would be willing to accept some increase in bodily damage if it meant living a life free of the unpleasantness of pain. And, as I have said, this choice may well be irrelevant anyway. I think that it is quite possible a phenomenologically distinctive neutral sensation could perform the job of warning us about bodily danger as well as pain does.

Let us now turn our attention to moral considerations concerning the infliction of pain. I must admit that I do not have the space to give this topic anything like a comprehensive treatment, but I think that some discussion of pain-infliction is still better than none. Accordingly I will limit my ambitions to accomplishing just a few things. I hope to make a case for the claim that there is an agent-neutral reason not to inflict pain on others, and I will also suggest some circumstances in which this reason might be overridden. Otherwise I will be content to point out some of the main issues which still must be addressed if we are to round out a treatment of the badness of pain-infliction.

We have seen previously that agent-relative reasons are generally easier to establish than are agent-neutral reasons. This is certainly true in the case of having a reason not to inflict pain on another. In order to have such an agent-relative reason, it seems these necessary and sufficient conditions must be fulfilled: 1.) you dislike pain; 2.) I know you dislike pain; and 3.) I care about your well-being. I will have an agent-relative reason not to harm you if and only if you dislike pain and I am aware of this, and you are someone close to me, such as a friend or a family member. Now, Hume thought that we have a natural sympathy for all other people, not just (some of) those with whom we happen to associate. If this were true it would raise the possibility that agent-relative reasons might apply to a wider scope of people than just those who we know and like. The third condition would apply to anyone, and the first two conditions might well be satisfied by our establishment of the claim

The objection as I present it was brought to my attention by my colleague Richard Gray.

that pain is essentially bad. Sadly, though, I think there is little evidence that humans do naturally have such a generalised benevolence as a simple matter of their psychological make-up. Perhaps some do, but it seems that so many do not that they are not really an exception to the rule so much as a rebuke of it. If we are to establish a very general reason against pain-infliction which applies to everyone, it seems we must do so in an agent-neutral fashion.

To review, an agent-neutral reason is one which is possessed by anyone. In our context, “*I* have a reason not to inflict pain on you” has the form of an agent-relative reason, while “*Anyone* has a reason not to inflict pain on you” has the form of an agent-neutral one. How can we demonstrate that anyone can have such a reason? We can begin by devising necessary and sufficient conditions to be met, as we did in the agent-relative case. The conditions will mimic our agent-relative ones in their content, but also reflect the greater scope agent-neutral reasons possess. I suggest, then, that there is an agent-neutral reason not to inflict pain on *x* if and only if 1.) *x* dislikes pain; 2.) anyone can be expected to believe *x* dislikes pain; and 3.) anyone has a reason to consider *x* valuable. If I am right about the badness of pain, then the first condition is automatically satisfied. Some masochists (and perhaps some others) might be confused about their attitudes toward pain, but if they understood the matter correctly they would admit that, strictly speaking, they dislike pain. Satisfaction of the second condition is almost as easy, even if we cannot expect everyone to know the complexities of the arguments about pain’s disvalue. This is because the commonsensical assumption for anyone to make about a stranger’s opinion of pain is that such a person finds it dislikable. Even those who (mistakenly) think that masochists genuinely like pain itself are aware that masochists make up a small percentage of the overall population. Even if they do not know anything about *x*, and believe masochists like pain, they nonetheless know *x* is unlikely to be a masochist. So, although it is not true that everyone *knows* that *x* dislikes pain, it is true that everyone can be expected to believe it as a default assumption.

It is the satisfaction of the third condition which is the most difficult. I have already expressed my doubts about the claim that it is a *natural fact* about human beings that we have

a general sympathy for each other. Yet what is at issue in the third condition is whether anyone has a reason to care about *x*. This includes those who have never met *x*, as well as those who have met *x* and have a negative opinion of him. If it is not a simple psychological fact about such people that they care about *x*, could they perhaps consider *x* valuable in a more abstract, intellectualized fashion? I think there is some hope that they can, though I am afraid I cannot give the argument the full treatment it deserves. Nonetheless, I think the best hope for satisfying the third condition lies in some arguments which have been advanced in the context of the equality of persons. Vlastos makes a distinction between human worth and human merit.¹⁷¹ Each person (understood here as human being) has a worth equal to all other persons, even if the merit (understood as a collection of qualities we can evaluate) of different persons varies greatly. So, for our purposes, everyone should care about *x*'s pain because *x* has human worth. So far our claim about worth is unjustified, but I think that the way forward is pointed by Joel Feinberg, who suggests that when we attribute worth to everyone, we are expressing an attitude of respect toward their humanity.¹⁷² This concept of humanity is not reducible to specific characteristics, but is appreciated by an attitude that is ultimate in itself. The attitude of respect we are speaking of here is a natural one insofar as agents recognize the value of their own humanity, and see that other agents are relevantly similar to them. Of course, some agents will fail to adopt this attitude of respect, and this failure might result from any number of factors, but the attitude seems to be one which, in principle, anyone *could* adopt. It also seems reasonable to say that the attitude is one that we *should* adopt, and that anyone who fails to adopt it is morally deficient. Again, more needs to be said on this subject, particularly on the topic of just what our operative notion of "humanity" is. But I hope I have pointed the way toward how the third criterion might be satisfied: anyone has a reason to consider *x* valuable because anyone is capable of adopting an attitude of respect toward *x*'s humanity, and anyone is capable of realizing they should do so.

¹⁷¹ Cf. Gregory Vlastos, "Justice and Equality" in *Social Justice*, ed. Richard B. Brandt (Englewood Cliffs, NJ: Prentice-Hall, 1962), 31-72.

¹⁷² Cf. Joel Feinberg, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), 88-94.

I have suggested that the agent-neutral reason not to inflict pain is not absolute, and here I wish to suggest a couple circumstances in which the reason might be overridden, acknowledging that there may be others I have not thought of. One such case occurs when the object of the reason desires the pain as a means to an end, as in several different examples we examined previously. Let us see this in the case of our old friend the masochist. If the pleasure of the masochist's total pain experience (the pain plus the relation it has to a given fact or set of facts) outweighs its displeasure and no one else is harmed by the masochistic activities in question, then I do not see why we should condemn anyone who inflicts pain on this person accordingly. My argument for a certain interpretation of masochism was never meant as an expression of moral disapproval, and if masochists are all consenting, then I do not see any reason to break up their party.

A second kind of exception from our agent-neutral reason might derive from paternalistic considerations. For example, there might be a small child who needs a vaccination but fears the pain of a needle. In such a case it seems appropriate for the doctor to inflict the pain of the shot despite the child's reservations. The crucial consideration here seems to be that a fully rational person would choose to receive the vaccination and endure the temporary pain it causes. Many children, though, are just unable to appreciate the full complexity of their own interests. It could be that this sort of paternalism can apply to others besides young children, but of course we should be wary of extending the scope too far.

Many other issues arise from the claim that there is an agent-neutral reason not to inflict pain on others, but unfortunately I do not have space to cover them. Among them are the question of exactly to whom the reason does and does not apply. The subject of the reason clearly has to be a person, but what about the object? Can it be any human (as opposed to a person), or for that matter an animal? Also, if there is an agent-neutral reason not to inflict pain, is there an agent-neutral reason to help others in pain? If there is, morality would become much more demanding. I am sure there are many other issues concerning pain-infliction about which I have been similarly negligent.

Of all the authors in this collection, I have probably taken the longest to talk about evil (at least explicitly), but at last I would like to close with a few thoughts about it. In doing so I only hope to show that I have laid the groundwork for the consideration of pain and pain-infliction as evils – I have not made arguments to show exactly which pains, and instances of pain-infliction, are evil, and I have space only to attempt the broadest of sketches. I am hoping a broad sketch is better than none.

Any discussion of the implications of my paper for evil will of course depend on what we mean by evil, and this is itself hugely controversial. Nonetheless I will quickly offer a few thoughts. First, in the case of natural evils, it seems that the only sort of thing evil could be is an extreme kind of badness. The tradition of seeing evil as something different in kind than badness seems not to make much sense when we speak of the evil of natural phenomena. On the other hand, when it comes to moral evil, conceiving of evil as something different in kind from badness seems to make a great deal of sense. For example, we are not content to say that Hitler's treatment of the Jews was very, very bad (no matter how many "verys" we include). It was not bad, it was evil. So moral evil seems to be a fundamentally different sort of phenomenon from natural evil.

With this two-fold picture of evil in mind, let us see how it applies to pain and pain-infliction. It seems straightforward to say that some pains will turn out to be natural evils. Just as there is a point (for natural evils) at which a bad thing becomes an evil, so there will be a corresponding point at which a pain which is bad becomes a pain which is a natural evil. Since both degrees of badness and intensities of pain can be seen as existing on continuums, the matter is easy to conceptualize. To be sure, there are difficult projects to be undertaken in this area. For example, it will not be easy to determine at exactly what point a bad thing becomes a natural evil, or correspondingly at what point a bad pain becomes an evil one. This is clearly a topic which deserves a separate treatment.

Because moral evil seems more complex than natural evil, the evil of pain-infliction is clearly going to be more complex than that of pain itself. If moral evil is different in kind than badness, then what sort of entity is it? I will suggest two necessary broad conditions an

agent's action must meet if it is to be considered a moral evil (I am not suggesting these conditions are sufficient). First, there must be some consideration of the agent's intention. The intention must be something like that of harming another simply for the sake of it. There is a gratuitous quality of evil acts which we must try to capture with this condition. Secondly, it seems there must be a certain amount of harm done. Even with the darkest of intentions, if P inflicts only a pinprick on Q, then we would be hard-pressed to call the action evil. Stalin's murder of millions of his own citizens was more evil than would have been the murder of only a few.

With these two necessary conditions in mind, it seems likely that some instances of pain-infliction will be moral evils. It is entirely possible that someone could inflict a great deal of pain with a great deal of malice (and sadly this point is often demonstrated). Whatever other conditions might turn out to be sufficient for moral evil, it is difficult to see that any plausible candidates would rule out instances of pain-infliction. Again, though, this is the barest sketch of the topic, and much work remains to be done. Particularly, we need a clearer idea of the sufficient conditions for moral evil, as well as how exactly to determine when an intention is evil and when the amount of harm done rises to a level we can call evil.

In the context of this volume my project has been to lay the groundwork for the claim that pain can be a natural evil and pain-infliction a moral one. I have tried to do this primarily by demonstrating the weaker claims that pain has essential disvalue, and that we have an agent-neutral reason not to inflict pain. I have also tried to make some suggestions on the topic of evil to point the way forward. But there is obviously much work yet to do, and I hope someone will be sufficiently intrigued to carry the argument further.

Acknowledgements

I would like to thank Richard Holton, Vinit Haksar, Timothy Sprigge, Vincent Hope, Michael Menlowe, and Richard Gray for their comments on previous drafts of this essay. At the

conference itself I benefited from the comments of several participants, most notably Eve Garrard and Michael Bavidge.

Bibliography

- Aquinas, Thomas. *The Summa Contra Gentiles III, Part II*. London: Burns, Oates, and Washbourne, 1928.
- Arneson, Richard J. 'Against Rawlsian Equality of Opportunity.' *Philosophical Studies* 93 (1999): 77-112.
- Audi, Robert, ed. *The Cambridge Dictionary of Philosophy*. Cambridge: Cambridge University Press, 1995.
- Baier, Kurt. *The Moral Point of View: A Rational Basis of Ethics*. Ithaca, New York: Cornell University Press, 1958.
- Barclay, Linda. 'Rights, Intrinsic Values and the Politics of Abortion.' *Utilitas* 11 (1999): 215-229.
- Benningson, Thomas. 'Irresolvable Disagreement and the Case Against Moral Realism.' *The Southern Journal of Philosophy* 34 (1996): 411-437.
- Bentham, Jeremy. 'A Critical Examination of the Declaration of Rights.' In *Bentham's Political Thought*, edited by Bhikhu Parekh. London: Croom Helm, 1973. Pp. 257-290.
- . *The Works of Jeremy Bentham*. Edited by John Bowring. Edinburgh: William Tate, 1843.
- Blackburn, Simon. 'Am I Right?' *New York Times*, February 21, 1999.
- . 'Is Objective Moral Justification Possible on a Quasi-realist Foundation?' *Inquiry* 42 (1999): 213-228.
- Bratman, Michael. *Intention, Plans, and Practical Reason*. Cambridge, Mass: Harvard University Press, 1987.
- Buckle, Stephen. 'Natural Law.' In *A Companion to Ethics*, edited by Peter Singer. Oxford: Blackwell, 1991. Pp. 161-174.
- Clifford, W.K. 'The Ethics of Belief.' In *Lectures and Essays, Vol. 2*. London: MacMillan and Co., 1879. Pp. 177-211.
- Dancy, Jonathan. *Moral Reasons*. Oxford: Blackwell, 1993.
- . *Practical Reality*. Oxford: Oxford University Press, 2000.
- Daniels, Norman, ed. *Reading Rawls*. Oxford: Basil Blackwell, 1975.
- Darby, Derrick. 'Are Worlds Without Rights Morally Impoverished?' *The Southern Journal of Philosophy* 37 (1999): 397-417.
- Darwall, Stephen. 'How Nowhere Can You Get (and Do Ethics?).' *Ethics* 98 (1987): 137-157.
- Dennett, Daniel C. 'Why You Can't Make a Computer that Feels Pain.' In *Brainstorms: Philosophical Essays on Mind and Psychology*. Hassocks, Sussex: Harvester Press, 1978. Pp. 190-229.
- D'Entreves, A.P. *Natural Law*. London: Hutchinson and Company, 1972.
- Dworkin, Ronald. *Taking Rights Seriously*. London: Duckworth, 1977.
- . 'What is Sacred?' in *Life's Dominion*. London: HarperCollins, 1993. Pp. 68-101.
- Feinberg, Joel. 'Duties, Rights, and Claims.' *American Philosophical Quarterly* 3 (1966): 137-144.
- . *Freedom and Fulfillment*. Princeton: Princeton University Press, 1992.
- . 'The Nature and Value of Rights.' *Journal of Value Inquiry* 4 (1970): 263-267.
- . *Rights, Justice, and the Bounds of Liberty*. Princeton: Princeton University Press, 1980.
- . *Social Philosophy*. Englewood Cliffs, NJ: Prentice-Hall, 1973.

- Finnis, John. *Natural Law and Natural Rights*. Oxford: Clarendon Press, 1980.
- Freeden, Michael. *Rights*. Buckingham: Open University Press, 1991.
- Frey, R.G., ed. *Utility and Rights*. Oxford: Blackwell, 1985.
- Gardiner, P.L. 'Pain and Evil.' *Aristotelian Society Supplementary Volume* 38 (1964): 107-124.
- George, Robert P., ed. *Natural Law, Liberalism, and Morality*. Oxford: Clarendon Press, 1996.
- Gilligan, Carol. *In a Different Voice*. Cambridge, Mass.: Harvard University Press, 1982.
- Goggans, Phillip. 'Ethical Individualism and the Natural Law.' *Ratio* 13 (2000): 28-36.
- Goldstein, Irwin. 'Pleasure and Pain: Unconditional, Intrinsic Values.' *Philosophy and Phenomenological Research* 50 (1989): 255-276.
- Grotius, Hugo. *De Iure Belli*. Oxford: Clarendon Press, 1925.
- . *De Iure Praedae Commentarius*. Oxford: Clarendon Press, 1950.
- . *The Jurisprudence of Holland*. Oxford: Clarendon Press, 1926.
- Haksar, Vinit. 'Nagel on the Subjective and Objective.' In *Indivisible Selves and Moral Practice*. Edinburgh: Edinburgh University Press, 1991. Pp. 230-241.
- . 'Collective Rights and Value of Groups.' *Inquiry* 41 (1998): 21-43.
- . 'The Nature of Rights.' In *Archiv für Rechts- und Sozialphilosophie* 64 (1978): 183-202.
- Hare, R.M. 'Pain and Evil.' *Aristotelian Society Supplementary Volume* 38 (1964): 91-106.
- . 'Utility and Rights: Comment on David Lyons's Paper.' In *Essays on Political Morality*. Oxford: Clarendon Press, 1989. Pp. 98-105.
- Hart, H.L.A. 'Between Utility and Rights.' In *Essays in Jurisprudence and Philosophy*. Oxford: Clarendon Press, 1983. Pp. 198-222.
- Hobbes, Thomas. *Leviathan*. Edited by J.C.A. Gaskin. Oxford: Oxford University Press, 1996.
- Hohfeld, Wesley Newcomb. *Fundamental Legal Conceptions as Applied in Judicial Reasoning*. Edited by Walter Wheeler Cook. New Haven: Yale University Press, 1919.
- Honderich, Ted, ed. *Morality and Objectivity*. London: Routledge and Kegan Paul, 1985.
- Honneth, Axel. 'Invisibility: On the Epistemology of "Recognition".' In *Aristotelian Society Supplementary Volume* 75 (2001): 111-126.
- Hume, David. *A Treatise on Human Nature*. Edited by Ernest C. Mossner. London: Penguin, 1985.
- Kamenka, Eugene, and Alice Erh-Soon Tay. *Human Rights*. London: Edward Arnold Publishers, 1978.
- Kant, Immanuel. *The Moral Law: Groundwork of the Metaphysic of Morals*. Edited by H.J. Paton. New York: Routledge, 1948.
- Korsgaard, Christine. *Creating the Kingdom of Ends*. Cambridge: Cambridge University Press, 1996.
- Kukathas, Chandra and Philip Pettit. *Rawls: 'A Theory of Justice' and its Critics*. Cambridge: Polity, 1990.
- Kumar, Rahul. 'Contractualism on Saving the Many.' *Analysis* 61 (2001): 165-170.
- Lemos, John. 'Bridging the Is/Ought Gap with Evolutionary Biology: Is This a Bridge Too Far?' *The Southern Journal of Philosophy* 37 (1999): 559-578.
- Lewis, David. 'Mad Pain and Martian Pain.' In *Readings in Philosophy of Psychology, Vol. I*, edited by Ned Block. Cambridge, Mass: Harvard University Press, 1980. Pp. 216-222.
- Lillehammer, Hallvard. 'Normative Antirealism.' *The Southern Journal of Philosophy* 37 (1999): 201-226.
- Lisska, Anthony J. *Aquinas's Theory of Natural Law: An Analytic Reconstruction*. Oxford: Clarendon Press, 1996.
- Locke, John. 'Second Treatise.' In *Two Treatises of Government*, edited by Peter Laslett. Cambridge: Cambridge University Press, 1960. Pp. 265-428.
- Mack, Eric. 'Moral Individualism: Agent-Relativity and Deontic Restraints.' In *Foundations of Moral and Political Philosophy*, edited by Ellen Frankel Paul, Fred D. Miller Jr., and Jeffrey Paul. Oxford: Basil Blackwell, 1990. Pp. 81-111.
- Mackie, John. 'The Subjectivity of Values.' In *Ethics: Inventing Right and Wrong*. London: Pelican, 1977. Pp. 15-49.
- Maitzen, Stephen. 'Closing the "Is"-"Ought" Gap.' *Canadian Journal of Philosophy* 28 (1998): 349-365.

- Marcuse, Herbert. 'Repressive Tolerance.' In *A Critique of Pure Tolerance*. Boston: Beacon Press, 1965.
- Maritain, Jacques. *Man and the State*. London: Hollis and Carter, 1954.
- Marx, Karl. 'On the Jewish Question.' In *Karl Marx: Early Writings*, translated by Rodney Livingstone and Gregor Benton. London: Penguin, 1975. Pp. 211-241.
- McDowell, John. 'Might There Be External Reasons?' In *World, Mind, and Ethics*, edited by J.E.J. Altham and Ross Harrison. Cambridge: Cambridge University Press, 1995. Pp. 68-85.
- McGinn, Colin. 'Critical Notice: *The View From Nowhere*.' *Mind* 96 (1987): 263-272.
- 'Reasons and Unreasons.' *The New Republic*, May 24, 1999.
- McNaughton, David. 'Moral Realism – An Outline.' In *Moral Vision: An Introduction to Ethics*. Oxford: Blackwell, 1988. Pp. 39-65.
- McNaughton, David, and Piers Rawling. 'Deontology and Agency.' *The Monist* 76 (1993): 81-100.
- 'Agent-Relativity and the Doing-Happening Distinction.' *Philosophical Studies* 63 (1991): 167-185.
- Mill, John Stuart. *On Liberty*. London: Penguin Books, 1974.
- *Utilitarianism*. Edited by Mary Warnock. Glasgow: William Collins Sons, 1962.
- Moore, A.W. 'Book Review: *The View From Nowhere*.' *The Philosophical Quarterly* 37 (1987): 323-327.
- Moore, G.E. *Principia Ethica*. Cambridge: Cambridge University Press, 1971.
- Nagel, Thomas. *Equality and Partiality*. New York: Oxford University Press, 1991.
- *Mortal Questions*. New York: Cambridge University Press, 1979.
- 'One to One.' *London Review of Books*, February 4, 1999.
- *The Possibility of Altruism*. Princeton: Princeton University Press, 1970.
- *The View From Nowhere*. New York: Oxford University Press, 1986.
- Nelson, William. 'On the Alleged Importance of Moral Rights.' *Ratio* 18 (1976): 145-155.
- Nozick, Robert. *Anarchy, State, and Utopia*. Oxford: Blackwell, 1975.
- O'Day, Ken. 'Intrinsic Value and Investment.' *Utilitas* 11 (1999): 194-214.
- O'Neill, John. 'The Varieties of Intrinsic Value.' *The Monist* 75 (1992): 119-137.
- Parfit, Derek. 'Rationality and Reasons.' Forthcoming.
- 'Reasons and Motivation.' *Proceedings of the Aristotelian Society Supplementary Volume* 71 (1997): 99-130.
- *Reasons and Persons*. Oxford: Oxford University Press, 1984.
- Peacocke, Christopher. 'No Resting Place: A Critical Notice of *The View From Nowhere*, by Thomas Nagel.' *The Philosophical Review* 98 (1989): 65-82.
- Pettit, Philip. 'A Consequentialist Perspective on Contractualism.' *Theoria* 66 (2001): 228-236.
- 'Doing Unto Others.' *Times Literary Supplement*, June 25, 1999.
- 'Two Construals of Scanlon's Contractualism.' *The Journal of Philosophy* 97 (2000): 148-164.
- Putnam, Ruth Anna. 'Perceiving Facts and Values.' *Philosophy* 73 (1998): 5-19.
- Quinn, Warren. 'Putting Rationality in its Place.' In *Morality and Action*. Cambridge: Cambridge University Press, 1993. Pp. 228-255.
- Railton, Peter. 'Moral Realism.' *Philosophical Review* 95 (1986): 163-207.
- Raphael, D.D. *Political Theory and the Rights of Man*. London: MacMillan, 1967.
- Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1993.
- *A Theory of Justice*. Oxford: Oxford University Press, 1972.
- 'Two Concepts of Rules.' *Philosophical Review* 64 (1955): 3-32.
- Raz, Joseph. *The Morality of Freedom*. Oxford: Clarendon Press, 1986.
- Reiss, Hans, ed. *Kant's Political Writings*. London: Cambridge University Press, 1970.
- Ridge, Michael. 'Saving Scanlon: Contractualism and Agent-Relativity.' Forthcoming.
- Rousseau, Jean-Jacques. *The Social Contract*. Translated by Christopher Betts. Oxford: Oxford University Press, 1994.
- Sartre, Jean-Paul. *Existentialism*. New York: Philosophical Library, Inc., 1947.
- Sayre-McCord, Geoffrey, ed. *Essays on Moral Realism*. Ithaca, NY: Cornell University Press, 1988.

- Scanlon, T.M. 'A Contractualist Reply.' *Theoria* 66 (2001): 237-245.
- *What We Owe to Each Other*. Cambridge, Mass: Harvard University Press, 1998.
- Schaefer, Brian. 'The Disvalue of Pain and Pain-Infliction.' In *Earth's Abominations: Philosophical Essays on Evil*, edited by Daniel N. Haybron. Amsterdam: Rodopi, forthcoming.
- 'Evil and the Need for Universal Moral Rights.' In *This Unweeded Garden: Evil in Theology, Philosophy, and Practice*, edited by Stephen Morris. Amsterdam: Rodopi, forthcoming.
- Simmons, A. John. *The Lockean Theory of Rights*. Princeton: Princeton University Press, 1992.
- Simpson, Evan. 'Rights Thinking.' *Philosophy* 72 (1997): 29-59.
- Sinnott-Armstrong, Walter. 'An Argument for Descriptivism.' In *The Southern Journal of Philosophy* 37 (1999): 281-292.
- Skorupski, John. 'Irrealist Cognitivism.' *Ratio* 12 (1999), 436-459.
- Smart, J.J.C. and Bernard Williams. *Utilitarianism: For and Against*. London: Cambridge University Press, 1973.
- Smith, Michael. *The Moral Problem*. Oxford: Blackwell, 1994.
- Stewart, Robert M. 'Agent-Relativity, Reason, and Value.' *Monist* 76 (1993): 66-80.
- Sumner, L.W. *The Moral Foundations of Rights*. Oxford: Clarendon Press, 1987.
- Thomas, Laurence Mordekhai. *Vessels of Evil*. Philadelphia: Temple University Press, 1993.
- Tomasi, John. 'Liberalism, Sanctity, and the Prohibition of Abortion.' In *The Journal of Philosophy* 94 (1997): 491-513.
- Tuck, Richard. *Natural Rights Theories*. Cambridge: Cambridge University Press, 1979.
- Tye, Michael. *Ten Problems of Consciousness: A Representationalist Theory of the Phenomenal Mind*. Cambridge, Mass: The MIT Press, 1995.
- Vlastos, Gregory. 'Justice and Equality.' In *Social Justice*, edited by Richard B. Brandt. Englewood Cliffs, NJ: Prentice-Hall, 1962. Pp. 31-72.
- Waldron, Jeremy. *Liberal Rights: Collected Papers 1981-1991*. Cambridge: Cambridge University Press, 1993.
- *Theories of Rights*, editor. Oxford: Oxford University Press, 1984.
- Warren, Virginia L. 'Explaining Masochism.' *Journal for the Theory of Social Behaviour* 15 (1985): 103-130.
- Wellman, Carl. *Real Rights*. Oxford: Oxford University Press, 1995.
- Wiggins, David. *Needs, Values, Truth*. 2nd ed. Oxford: Basil Blackwell, 1987.
- Williams, Bernard. 'Internal and External Reasons.' In *Moral Luck*. Cambridge: Cambridge University Press, 1981. Pp. 101-113.
- 'Internal Reasons and the Obscurity of Blame.' In *Making Sense of Humanity*. Cambridge: Cambridge University Press, 1995. Pp. 35-45.
- Yasenchuk, Ken. 'Moral Realism and the Burden of Argument.' *The Southern Journal of Philosophy* 35 (1997): 247-264.